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Joint PhD programme of University of Padova, Ca' Foscari University of Venice, and University of Verona
Administrative department: University of Padova (DiSSGeA)

DOCTORAL THESIS

DOCTORAL PROGRAMME IN HISTORICAL, GEOGRAPHICAL, AND ANTHROPOLOGICAL STUDIES
Curriculum: ANTHROPOLOGY
XXXV Cycle

"Immoral" women, invisible children.
An anthropological analysis of the phenomenon of unregistered children in Japan in a gendered perspective

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Abstract

It is estimated that every year in Japan 3,000 children go unregistered. When they are born, they are not recorded in the *koseki*, the main registration system for Japanese citizens. It is known as the *mukoseki* problem. Without documents, access to public services such as education, health care, and welfare is extremely complicated, if not impossible. As adults they will also struggle to work, open a bank account, rent housing, vote, get married, register their children, get a passport or a driver's license. In 70 percent of cases the reason why mothers do not register children is Article 772 of the Civil code, according to which children born within 300 days after divorce are children of the ex-husband. When this is not the case, mothers must prove so in court.

This phenomenon has been largely ignored by scholarship on Japan, and this research fills this gap in the literature with a novel approach. It is an anthropological analysis of the *mukoseki* problem based on ethnographic data, such as participant-observation and semi-structured in-depths interviews with mothers of *mukoseki* children, former *mukoseki*, activists, and lawyers. It also uses a multidisciplinary approach, drawing on history, media studies, and law. This thesis traces the history of the *mukoseki* problem along with the history of the *koseki* register, and the transformations of socio-cultural notions of family in Japan, with a focus on the second post-war period. It illustrates the present legislative and administrative context for the *mukoseki* problem and the obstacles that mothers of *mukoseki* children face in their struggle to register them.

I argue firstly that Article 772 is biased and that it has not been amended since 1898 because of the concerns of conservative politicians that allowing married women to register a child as the son or daughter of a man who is not their husband will sanction infidelity and disrupt families; secondly, that behind the conservatives' objection is the desire to control women's fertility and the moral assumption that the 300-day problem is the just punishment for women who deviate from social expectations regarding marriage; and lastly that government measures taken to solve the *mukoseki* problem so far, including the reform to the Civil Code, are ineffective because they do not eliminate this bias.

Contents

Chapter 1 – Introduction

It is estimated that about 3,000 children go unregistered every year in Japan (Ido 2018). Their birth is not registered, and they are not entered in the *koseki* system, the main form of registration for Japanese nationals. They are known as *mukoseki*, children without a *koseki*. They are undocumented, invisible to the State, and without proof of identity they face many barriers, such as difficulty accessing public services like health care and education. And, in the case of *mukoseki* adults, they are easily preyed on by organized crime and loan sharks as they are unlikely to find legal employment or housing. Without a *koseki* they are also denied other forms of identity documentation such as a passport or a driver's license, and most necessities such as a bank account or a phone plan. 70 percent of *mukoseki* cases are caused by a discrepancy between who the law defines as the legal father of the child, and who the biologically related father is. According to Article 772 of the Civil Code, every child born during marriage is presumed to be the husband's child, and this presumption of legitimacy extends to children born within 300 days after divorce, as they are presumed to have been conceived in marriage. When the presumed father and the biological father do not coincide, mothers are not allowed to register their children, if not as children of their (ex-)husband. The *mukoseki* problem is particularly interesting because it raises questions regarding the normative notion of family in contemporary Japan, its normalization through the *koseki*, and the divide that exists between the *koseki*-family and real families. In this phenomenon this mechanism is inextricably linked to the production and reproduction of hegemonic gender roles and notions of women's sexuality within the institution of marriage. More broadly, it is a useful lens to understand the fundamental mechanism of inclusion and exclusion that operates in and through the *koseki* system and the normative notion of family, and the relationship between the gendered individual and the State. So far, studies on the *koseki* have mostly focused on citizenship and nationality, while my focus is on gender. My thesis aims at understanding the socio-cultural assumptions behind the legitimacy presumption of Article 772. By presuming who the legal father is, this law makes it impossible for Japanese married or recently divorced women to register children conceived with another partner. Japanese men are always able to acknowledge a child, regardless of their marital status and of who they have conceived the child with. The law seems to be based on notions of male sexuality that condone extra-marital relations, and notions of female sexuality that condemn them. I will examine how normative notions of women's sexuality and women's role as wives and mothers influence the legislation, and the political debate around it, in the context of the *mukoseki* phenomenon. This will shed light on the reasons why Article 772 has never been amended for the 124 years prior to the 2022 reform, and on the conservatives' arguments for opposing the elimination of the 300-day rule. In this direction, this

thesis reflects on the effectiveness, or ineffectiveness, of government measures taken so far to prevent new *mukoseki* cases, to support the livelihoods of *mukoseki* people, and to help mothers register their children, to ultimately eliminate the *mukoseki* problem. This research also aims at understanding the stigma surrounding the *mukoseki* problem, especially towards mothers, and how it is influenced by normative notions of female sexuality reproduced by the *koseki* system. Finally, I will examine the forms of activism surrounding the *mukoseki* problem and the reasons why there has not yet been a collective movement for *mukoseki* rights. I have based my analysis on semi-structured in-depths interviews with mothers of *mukoseki* children, former *mukoseki*, and also lawyers and activists that are committed to solving the *mukoseki* problem. My fieldwork took place during a momentous event, the final stages of the reform of Article 772, aimed at eliminating *mukoseki* cases. I carried out participant observation as an auditor at the Judicial Affairs Committee of the House of Representatives and the House of Councillors where the reform of Article 772 was being discussed, alongside Ido Masae, the main activist for *mukoseki* rights. To better understand how this phenomenon is understood by *koseki*-registered Japanese, who do not have first-hand knowledge of it, I analysed how different media – literature, film, television, theatre, comics, newspapers, and social media – represent the *mukoseki* problem, and especially how they portray mothers of *mukoseki* children. I will argue that although within the public and political debate the *mukoseki* problem is not discussed as a women's rights issue, what is really at the heart of the conservative politicians' arguments for opposing a significant reform of Article 772 is the safekeeping of the institution of legal marriage as the only legitimate locus of women's sexuality and reproduction. I will further argue that both the *koseki* and the legitimacy presumption of Article 772 (re)produce a patriarchal, nationalistic, cis-heteronormative ideology which defines the borders of nation, race, family, gender, and sex. And, in turn, produces and internalized gendered shame in mothers of *mukoseki* children, who blame themselves for their children's *mukoseki* status. I will then examine the reasons why there is no collective movement around the *mukoseki* problem and discuss the strategies of both activists, to advocate for more effective measures, in light of the legacy of the motherhood protection (*bosei hogo*) debate, and mothers of *mukoseki* children, to register them, using Mahmood's (2001, 2005) definition of agency.

1. Definition of the *mukoseki* problem and key concepts

The *mukoseki* problem has been given various definitions, that carry different assumptions and implications, particularly regarding the causes of this problem. Therefore it is important to start this thesis by clarifying which of these definitions is underlying my analysis of this phenomenon. Here, the *mukoseki* problem is defined as a phenomenon that arises when a child's parents or legal guardians

do not submit the child's birth certificate because of conflicting circumstances, resulting in the child being undocumented for a limited period or indefinitely. *Mukoseki* are children or adults who are *de jure* Japanese (i.e. who have at least one Japanese parent, as Japan is a *jus sanguinis* country) and should be registered in the *koseki* system, but their birth certificate is not submitted, or is not accepted by a local government office, and they are not registered. Hence, the term *mukoseki* indicates those who should be registered in a *koseki* but are not. It does not indicate foreign residents who are not registered in the *koseki* system by default. It is a problem specific to the *koseki* system. Since the *koseki* is the basis of any other form of documentation of identity for Japanese citizens, *mukoseki* people are, in most cases, undocumented. Although the causes may vary and may include child neglect and abuse, in the majority of cases the child's parents or legal guardians *want* to register the child but doing so could have negative or harmful consequences for both the child and the parents. In these cases, the modality of the child's registration that is legally required of parents is undesirable because of a discrepancy between who the law presumes the father to be and who the biological father is. To avoid assigning legal paternity to someone who is unrelated to the child, parents might avoid or postpone registration. According to Article 772, all children conceived during marriage are considered, and must be registered as, children of the mother's husband. When this is not the case, however, it is not possible to register these children otherwise. Therefore, if a woman has a child with a man other than her husband while being married, the husband would still be assigned legal paternity automatically. This can be especially problematic for women who leave their abusive husbands and struggle to obtain a divorce. If they have a child with a new partner before divorce, this child will be considered the husband's child by law and will have to be registered accordingly in the *koseki* system. This problem also affects recently divorced women, since the second paragraph of Article 772 adds that children born within 300 days after divorce are presumed to be conceived in wedlock and, therefore, are presumed to be the legitimate children of the husband (*chakushutsu suitei*). This so-called 300-day problem (*sanbyaku nichi mondai*) causes 70 percent of all *mukoseki* cases (Ido 2017). Even though many other countries have similar laws establishing paternity *a priori* during marriage this usually does not cause children to go unregistered. Japan's case is different in that the Japanese registration system is family-based, not individual-based. Upon registering a new-born child, the child's relationships to other registrants of the same *koseki* are immediately established. The child will be registered differently according to whether the mother is married or unmarried (i.e. the legitimacy or illegitimacy of the child). And when the mother is married, the legal father-child relationship is established and registered immediately. This also applies to mothers who are recently divorced because their children are presumed to be conceived in marriage.

The *koseki* is the main registration system for Japanese nationals, which records and notarizes events such as birth, marriage, adoption, divorce, and death. Its fundamental unit is the *ko*, which is defined by Japanese Family Law as a married couple and their unmarried children (*fūfu to mikon no ko*). Therefore, all individuals and family configurations that do not conform to this standard *koseki*-family are inevitably misrepresented, to various degrees, by the *koseki*. These include, but are not limited to, de facto couples (White 2018), international married couples (Chen 2014), same-sex couples (Bryant 1991, Maree 2004), transgender people (Ninomiya 2014), single mothers (Hertog 2011, White 2018) and mothers who have children through surrogacy (Mackie 2014). In all these cases the affective reality of families is not legally recognized. It does not fit, and cannot be correctly represented by, the *koseki*. The *koseki* is not only a record of one's identity, but also proof of nationality (Krogness 2014, Endo 2019) as it exclusively registers Japanese nationals, and a copy is required when requesting a Japanese passport. It is through *koseki* registration that any changes in civil status – marriage, divorce, adoption – gain legal validity. Therefore, it appears clear that not being registered in the *koseki* or being misrepresented by the *koseki* system has severe consequences.

2. Methods

2.1 Remote ethnography

During my PhD, between 2019 and 2022, I engaged in both first-hand, classical ethnography and remote ethnography. As for remote research, drawing on media studies I analysed newspaper articles, novels, manga, TV dramas, films, and theatre screenplays that portrayed the *mukoseki* issue. I could rarely find any first-hand accounts of *mukoseki* people themselves, but I found a plethora of representations of the *mukoseki* issue from different perspectives. Since this phenomenon is not widely known, in Japan or abroad, every portrayal of the *mukoseki* issue is particularly impactful on public opinion. Therefore, analysing how it is represented allowed me to grasp the way that the public likely understands and thinks about the *mukoseki* issue. This allowed me to understand what the most common misconceptions about *mukoseki* people and their mothers are, and to better understand the stigma surrounding lack of registration. As for netnography I focused on Twitter, one of the most used social media platforms in Japan. I read and archived posts and comments of Japanese speaking profiles about the *mukoseki* issue. I found heated discussions between, on one hand, those who consider it a social issue not worth solving, that it is not the law nor the *koseki* to be at fault, and that mothers of *mukoseki* children are just too selfish and stubborn, and, on the other, those who were sympathetic. Posts that asked for clarifications on the matter were also extremely interesting because they highlighted the many ways this issue is misunderstood by *koseki*-registered Japanese. Lastly, I

also had access to the unpublished results of a survey conducted in 2009 by researcher Karl Jakob Krogness, who kindly shared them with me. This material consists of 268 responses to the questionnaire elaborated by Krogness and distributed via post. The questions are open-ended and aim at understanding how important the *koseki* is for its registrants, what this importance is attributed to, what functions it is believed to have, and whether it is generally appreciated or criticized as a registration system. We can assume that the attitude towards the *koseki* today has not changed greatly since 2009 because, although fourteen years have passed, the most significant changes to the *koseki* system had already taken place by 2009, and so *koseki* administrative procedures have remained the same.

2.2 Fieldwork

I conducted fieldwork in Tokyo from June to December 2022, while I was a visiting researcher at Waseda University. My research was selected by the European Association for Japanese Studies to be sponsored by a Toshiba International Foundation fellowship, which funded three months of my stay. I arrived in Tokyo in early summer, when it should have been the middle of the rainy season. Instead, the skies were clear as Japan was hit by a sustained heatwave, with temperatures reaching all-time highs across Japan. Perceived temperature in Tokyo would reach 47C every other day, which made leaving the house before sundown almost unbearable. 'Cool down' centres for the elderly were opened by the local authorities. Despite the long-lasting border restrictions COVID-19 cases were on the rise and, even if it was no longer mandatory, most people adopted a cautious approach and wore a mask at all times. Nevertheless, the weakening yen, supply chain issues, and consequent inflation contributed to the country's shift toward living with the virus albeit with caution, leading up to the reopening of the borders for all in October. On July 8 the killing of former Prime Minister Shinzo Abe, who was giving a speech in Nara for the electoral campaign, shocked the nation. The assassination revealed the widespread connections between the former Prime Minister and the Unification Church, a Christian cult originated in South Korea that is said to have financially supported the ruling Liberal Democratic Party (LDP). The House of Councillors election saw a sweeping victory of the LDP and coalition partner Komeito, securing Fumio Kishida's cabinet and allowing him to push ahead a major shift in defence policy, in line with the party's agenda to revise Japan's pacifist Constitution.

As with every fieldwork, the first weeks were spent exploring every possibility and getting contacts, and were filled with uncertainty, failed attempts, and reorientations. Things were finally set in motion when I was introduced to Sakamoto Yoko, lobbyist, and activist for the separate-surnames movement.

I knew Sakamoto-san's work because she was one of the founders of M-net, a network of activists, scholars, women, and men who are critical of the *koseki* system[1]. The network's action is mainly focused on the issue of surnames for married couples (*fūfubessei*). When a couple gets married in Japan, and both spouses are Japanese nationals, their marriage becomes legal once they do *nyūseki*, a word that means 'entering the register'. One of them must enter the register of the other[2]. According to Koseki Law, all members of a *ko* must have the same surname (*uji*), and spouses are not allowed to keep their surname. Although either one can decide to give up their surname, in 96 percent of cases it is the wife who changes her surname (Ministry of Health, Labour and Welfare 2007). The *fūfubessei* movement has been asking for a reform of the law since the 1990s. Sakamoto-san has always been openly critic of the *koseki* system, but I did not know that she had also played an important role in bringing the *mukoseki* issue to the attention of the National Diet in 2007. At the time, newspapers had just started writing about this issue and there were no books on it yet, so her booklet was the first one to illustrate the *mukoseki* phenomenon (Sakamoto 2008). She also set up the very first hotline for people struggling with the *mukoseki* issue. In just one day she received dozens of calls, and thanks to that she was able to get the Diet's attention. In 2007 there was no data, and nobody knew how extensive the problem was, until they saw how many people called asking for help in just that one day. Sakamoto-san, already a public figure with ties to members of the Diet, fought alongside Ido Masae, the main activist for *mukoseki* rights, to push for a reform of Article 772. When I met Sakamoto-san, she was no longer involved in *mukoseki* activism, though she is still a passionate supporter of the cause, but she was still in contact with some mothers of *mukoseki* children. So she introduced me to Kawamura Mina and her son, who was born premature after only seven months of gestation, 292 days after the mother's divorce. Kawamura-san was kind enough to tell me about her story and to include her now 14-year-old son in the conversation. Kawamura, in turn, helped me get in touch with Ido Masae, the main activist and advocate for *mukoseki* rights. Ido herself was caught up in the 300-day problem in the early 2000s and hers was the first court case to overturn the legitimacy presumption of Article 772 without the involvement of her ex-husband. She created this legal precedent and thanks to her, something that was previously impossible, namely, proving biological paternity of the child without the cooperation of the ex-husband, is now done routinely. After this experience Ido, who had a political science background, built her political career, and started a non-profit organization to help other mothers like herself. She is also a freelance journalist

[1] M-net website: https://www.ne.jp/asahi/m/net/

[2] Since the 1947 reform of the Koseki Law a new *koseki* is created for the married couple, but one of them will be *hittōsha* or head of the register and therefore that will be their *koseki*, and the spouse will enter it according to their relationship to the *hittōsha*. They will have to leave it in case of divorce.

and has written for many newspapers on the *mukoseki* problem. She has devoted herself to helping mothers and *mukoseki* adults along their legal journey and to advocating for a reform of Article 772 for more than twenty years. In Japan, where there is still little awareness on the *mukoseki* issue, Ido is one of the two activists who have dedicated themselves to this cause. The other one, Ichikawa Mayumi, has been supporting adult *mukoseki* people around Nara since 2014. Ido agreed to help me and invited me to her office. When I reached her address, I was nervous. Finding *mukoseki* people or mothers of *mukoseki* children is no easy endeavour, as I will explain later in this chapter. My whole research depended on her, because only through her introduction I could hope to reach people who had experienced the *mukoseki* problem. We chatted while she made me a cup of coffee. She asked me about Waseda, where I stayed, where I had learned Japanese. While I was sipping the hot coffee, she handed me a copy of her PhD thesis and we started talking about fieldwork, what I had in mind, and the ways she could help me. She explained that it would be hard for her to find people willing to talk to me. But she promised she would ask those she was currently helping and introduce me to lawyers and researchers that had worked on the issue. But most importantly she invited me to follow along in her *mukoseki*-related activities. Her biggest endeavour in the fall of 2022 would be around the reform of the Civil Code, that included Article 772, undergoing its final stages. She planned on meeting with like-minded members of the Diet to convince them to challenge the Ministry of Justice and the Civil Affairs Bureau, the authors of the draft. And from that day on our collaboration started and I began learning from her and her decades-long experience advocating for *mukoseki* rights and helping mothers and *mukoseki* people.

During the six months of fieldwork I conducted semi-structured in-depth interviews, both online and in person, with four mothers, three former *mukoseki*, two stateless people who also identified as *mukoseki*, two lawyers, three activists, one employee of the Civil Affairs Bureau of the Ministry of Justice, and one politician. Although limited in size, this sample represented a variety of different *mukoseki* cases. And, as I will explain in the following paragraph, there are several factors that make it very difficult to interact with *mukoseki* people or their families, and that explain why there is no research on the *mukoseki* problem that draws on direct accounts of the people involved. Thanks to my interlocutors I got an insight into the *mukoseki* issue that allowed me to see through the surface of sensationalistic news and complicated bureaucratic jargon, to witness the real-life effects of a discriminatory law, and to verify the ineffectiveness of the government's measures to alleviate these effects. All interviews were conducted in Japanese, and in some cases where the interlocutor lived too far away from Tokyo, or there were privacy concerns on their part, the interviews were held online. When I could meet with them in person, the meetings were held in their office or at Waseda University.

For some of my interlocutors I am not able to share personal information per their request, either because they were hiding from an abuser or because they were afraid of stigma, thus I will use pseudonyms throughout the thesis. I also conducted participant observation at the National Diet where the reform of Article 772 was being discussed, with the purpose of eliminating the *mukoseki* problem.

2.3 The impact of the COVID-19 pandemic

Originally, my idea was to carry out fieldwork in Tokyo, where Ido Masae's non-profit organization is based, and in Akashi, where the mayor Fusaho Izumi is particularly supportive of unregistered people and has taken action to prevent the issue and support *mukoseki* people that has no other examples in Japan. I imagined finding *mukoseki* people would be difficult and I planned to contact Ido Masae, Mayumi Ichikawa, and the city of Akashi, and hopefully be introduced to *mukoseki* people and their families. When I was five months into my first year of PhD, however, the first wave of the COVID-19 pandemic hit Italy. Weeks turned into months as it slowly became clear that the end of this unprecedented global phenomenon was not near. Japan closed its borders, and it would only reopen them to students and academics in March 2022. Most researchers in the field of Japanese studies, and I with them, waited for two years to be able to enter Japan. For me, those two years were the most part of my 3-year PhD program. But I was in such disbelief that I felt that, surely, if I waited just a little longer Japan would reopen its borders and I would be able to do fieldwork, without having to compromise. So I waited. In the meantime, I reached out to activists Ido and Ichikawa via email and tried to contact the mayor of Akashi through the city's website, thinking that if had to give up on participant-observation, I could still do interviews online. Contacting the mayor was out of my reach without and introduction, as it often is in Japan, but I got in touch with Ido and Ichikawa. However, building a rapport with them long-distance proved to be more difficult than I expected. I decided I would then focus on building stronger foundations for my research. I studied the history of the *koseki* system, learned about what changed and what remained the same since its creation, the impact that it had on people's lives when *koseki* records used to be publicly accessible, and how it is now. I explored the different ways the *koseki* affects men and women, and the various forms of discriminations it creates, from same-sex couples to international couples, from single mothers to wives who want to keep their surname, from transgender people to children conceived with IVF and surrogacy. This gave me a better understanding of the larger socio-cultural and historical context where the *mukoseki* issue takes place. One other aspect that I focused on to understand the notion of *ko*, the fundamental unit of the *koseki*, was the family: the various transformations of cultural notions of family in Japan since the institution of the first *koseki* system, their historical context, and, particularly, the profound gap that there has always been between the hegemonic and legal definitions of family, on one hand,

and real families, on the other. I also studied the relevant legislation and the court system in Japan to have the necessary tools to understand what the experience of a *mukoseki* person in a courtroom might be like. At the same time, unable to do participant-observation, nor interviews with interlocutors, I started using the methods of netnography, scanning social media for relevant posts, and learning about remote ethnography in general. Time went by and in March 2022 Japan eased border restrictions to allow incoming travel for business or study purposes. I had already arranged an exchange with the Graduate School of Asia-Pacific Studies and the School of International Liberal Studies at Waseda University, so after getting Covid two days before my flight and having to postpone my departure for another month, I could finally leave. My fieldwork was inevitably shorter than usual, as it only lasted six months, and I could only start gathering data towards the end of my PhD, which greatly impacted my writing process. It goes without saying that a longer fieldwork would have allowed me to interact with more interlocutors, gather more data, and ultimately have a much clearer picture of the *mukoseki* problem. But there were also other obstacles that were inherent to the *mukoseki* phenomenon itself.

2.4 The long-term effects of stigma

When I first met Ido Masae, I thought that, surely, she could introduce me to some of the people she helped along the way. So I mentioned that I hoped to talk to mothers of *mukoseki* children or *mukoseki* adults. She replied that, unfortunately, it was 'difficult' (*muzukashii*), which I learned to interpret as 'impossible' in the context of the Japanese language, where negative responses tend to be very indirect as a sign of consideration for the other person's feelings. Even though I thought this might be the case, I was surprised. She had been an activist for *mukoseki* rights for over twenty years and helped about 3,000 people along the way. She was the person who most *mukoseki* people turned to for help. Nevertheless, she explained that she found it difficult to find interviewees for her own doctoral research, even though they knew her and trusted her. There appears to be several factors at play, the main one being that now that there are more infrastructures in place[3] for people struggling to obtain a *koseki*, Ido has significantly less consultations (*sōdan*). She had the most cases between 2007, when the issue started getting the attention of the media, and 2014. When I met her, she was following only two cases.

> In 2014 the local survey [on the *mukoseki* problem] started, and as soon local wards and legal affairs bureaus started giving counselling [to people affected by the *mukoseki* problem], the calls that I got decreased very rapidly, and they started doing things at the local wards. I barely receive any calls now. (Ido Masae, 19 November 2022, Tokyo)

[3] I will give an overview of these infrastructures in Chapter 3.

Now local offices are more prepared to help mothers, and there are more lawyers who are knowledgeable about the 300-day problem. Although it is far from an ideal scenario, mothers of *mukoseki* children do find some help through the official channels nowadays. And this, according to Ido, can sometimes be detrimental, because local offices might give out incomplete or inaccurate information.

> I think it's probably because the city hall and the Japan Federation of Bar Associations have taken up consultations, so, well, it's not a bad direction, it's good that they're not coming to me. I think that it's a good thing, but on the other hand I wonder if [the local wards] are offering solutions the way that [*mukoseki*] people want. (Ido Masae, 24 January 2023, Tokyo)

Mukoseki people and mothers need someone who knows how to navigate all the different administrative offices at the local and national level, who knows the laws and regulations thoroughly, and that understands their situations and their needs. This is something they will not find at the local government office. The fact that they are not simply turned away, as it used to be, and instead they are given an explanation and options, might prevent women from seeking additional help. Another reason why now Ido has significantly less cases, in her opinion, might be that in those seven years all the people who had been struggling with the *mukoseki* problem for a long time, and could not solve it because of particularly complicated circumstances, already have come forward. All the cases that were solvable, had been solved, and the ones that remained were the ones that proved impossible to solve under the current law. This might happen if the *mukoseki* person has no proof of relationship to their parents, and cannot prove they are Japanese or, in cases of domestic violence, because the involvement of the ex-husband would threaten the *mukoseki* person and their family's safety. And so, it is likely that after this first wave of cases, there simply were no more difficult cases left. The majority of *mukoseki* cases are caused by the 300-day rule of Article 772 and, thanks to Ido's activism, these cases are now easier to solve through the official channels.

She explained that, throughout her activism, the people who agreed to be interviewed by her, or by newspapers and TV stations per her request, did so because they were grateful to her since she went above and beyond to help them and never asked for money. So they wanted to contribute to the cause. Furthermore, she continued, when they were still amid their legal battle, they might have been keener on publicly talking about their experience. Now that she does not have many cases, there are significantly less people who are willing to share their experience with reporters and researchers. After people get their *koseki*, she said, they want to put all of this behind them and move forward. They do not want to recall these traumatic experiences and she does not want to cause them harm by asking them to.

> I really want the people directly involved [in the *mukoseki* problem] to convey their message, to have their voice heard, for example with interviews and the like, but I really hesitate to ask. That is to say, it means asking people who are trying hard to build a life and to forget about the fact that they were *mukoseki* […] to relive that experience again, right? This way, even though they are strong and it's admirable of them to let the world know about this problem, and that [things] needs to be changed, having to relive [that experience] countless times, […] they get hurt, obviously. (Ido Masae, 24 January 2023, Tokyo)

But it was not only about the emotional and psychological pain of reliving a terrible experience. She explained that even though finally getting a *koseki* might feel like a miracle for some *mukoseki* people, especially adults who have spent most without documents and faced all sorts of obstacles, it is not the end of all their problems but merely the start of different ones. Most *mukoseki* adults have not been able to get an education and to get regular jobs. This means that they will have difficulty finding and holding a job, even if they now have documents. Many of them have taken out loans to usurers and are now deep into debt. She also mentioned the social challenges that many of them face since they lived isolated, or with minimal social interaction, their whole lives, without the opportunity to develop social skills. They struggle with colleagues and bosses at work, making friends or having romantic relationships. In her words, they might have a *koseki*, but they got a late start in life, and they are too preoccupied trying to navigate society. In her experience, most of them did not have the time or the capacity to talk about their experience as *mukoseki* now, or they did not want to be associated with the label *mukoseki* any longer. «But», she added, «I'll reach out to some people and let you know». It is mostly through Ido's introductions that I met my interlocutors, but the sample was inevitably limited in number and therefore cannot accurately represent the experiences of the totality of *mukoseki* individuals or mothers of *mukoseki* children. Most of my interlocutors were either mothers who were facing, or had faced, the 300-day problem, their children, or professionals who had supported mothers struggling with the 300-day rule. So although the *mukoseki* phenomenon is not limited to the 300-day problem, Article 772 and the experiences of mothers trying to register their children have become the focus of my thesis. More research is needed on other kinds of *mukoseki* cases and on the experiences of *mukoseki* adults. One other aspect that I could not consider in my thesis is how the *mukoseki* problem intersects with issues of nationality. The same reform that amended Article 772 also added a new paragraph to the Nationality Law which enables retroactive and automatic loss of nationality when no biological relationship exists between a child born out of wedlock and the Japanese father who acknowledges the child, even if is results in statelessness, and with no time limit. The *mukoseki* issue and the introduction of this paragraph to the Nationality Law were discussed simultaneously in the Diet. The comparison of the two highlights a double standard. For the former issue the main problem is the parents' inability to have the biological father-child relationship recognized. According to the law priority is given to the legal father-child relationship.

While for the latter, when a Japanese man who has acknowledged a child, whose mother is of a different nationality, is proven to be biologically unrelated to them, priority is given to the biological father-child relationship. These children could lose their Japanese nationality and their *koseki*, therefore becoming *mukoseki*, at any point in life.

3 Overview of the chapters

In Chapter 2 I consider the literature, in English and Japanese, on both the Japanese *koseki* system and the *mukoseki* problem and highlight how my research draws on, and diverges, from it. So far, studies on the *koseki* have mostly focused on citizenship and nationality, while my focus is on gender and particularly, on the gendered shame that the *koseki* instils in its female registrants. Chapman (2008) draws on Foucault and describes the *koseki* as a technology of power, a net-like structure that decentralized the agent of surveillance and makes the instrument of power (i.e. the *koseki*) seemingly neutral. Building on this notion, I develop it in connection with that of *koseki* consciousness (Ninomiya 2006, 2014, Krogness 2008), an awareness of what one's *koseki* should look like, and with the politics of shame (Ahmed 2004). I also consider how hegemonic notions of family, on one hand, and real families, on the other, have changed from the post-war era to present day Japan and, more specifically, on the changing value placed on consanguineal ties, through an exploration of the practice of adoption in a historical perspective. And finally I examine hegemonic notions of male and female sexuality, with a focus on state ideology and how the Japanese state has attempted to confine and control sexuality, and fertility, from the Meiji era (1868-1912) onwards. Chapter 3 delineates the history of the *koseki*, from its ancient predecessors to the present day, to illustrate its role as a tool of population control and, in the Meiji era, as a means to create the Japanese nation-state. It then illustrates the functions and characteristics of the current *koseki* system, and how it misrepresents families that do not fit the standard *ko*. I then turn to the *mukoseki* problem, with a focus on Article 772, and outline the administrative and legislative context. I explain in detail how the *mukoseki* problem arises, what it means to not have a *koseki* in contemporary Japan, and what are the strategies available for mothers to register their children. Then I analyse how this phenomenon is represented, and particularly how it is misrepresented, in the media, how it is talked about online, and how the Ministry of Justice writes about it on its website, to understand how it is perceived by *koseki*-registered Japanese. Chapter 4 introduces the stories of the mothers of *mukoseki* children, and former *mukoseki* children themselves, and includes an account of my participant-observation at the National Diet. Building on the ethnographic evidence, I will argue that *koseki* consciousness manifests itself as an internalized shame in mothers of *mukoseki* children. Mothers blame themselves, on an emotional level, and the way that the issue is talked about in the political debate reinforces this shame.

Instead of a social problem, it is depicted as an individual problem, and one that is caused by the actions and choices of the mothers. I refer to the 'motherhood protection' (*bosei hogo*) rhetoric, its uses and misuses, and its legacy within the political discussion around the reform of the legitimacy presumption system to shed light on the socio-cultural reasons why the *mukoseki* problem is never discussed as a women's rights issue, by both sides of the debate. However, I argue that even though the focus is on children, the conservative Cabinet's unwillingness to eliminate the 300-day rule stems from a desire to control women's sexuality and fertility. The political debate is not really about who the father is, but about controlling the maternal body by conflating female sexuality to reproduction and maintaining legal marriage as the only legitimate locus of reproduction.

Chapter 2 – Literature review

1. The *mukoseki* problem

Scholarship on the *mukoseki* problem is extremely limited and mostly focused on issues of citizenship and nationality (Krogness 2014, Chen 2014, Chapman 2018, Akiyama 2018). Sakamoto (2008) and Abe (2010) do not define *mukoseki* individuals as stateless, despite mentioning that they share similar challenges to stateless people in Japan, while Chen (2014), whose research topics include the Chinese diaspora, statelessness, and global migration, agrees with Sakamoto and Abe but goes more into depth, comparing the situations of the two groups in Japan. She argues that although the two groups share very similar experiences and challenges, and that both lack a «legal belonging within a globalized society» (Chen 2014:222), there is a fundamental difference in that stateless people are presumed to be foreigners and *mukoseki* people are presumed to be Japanese. Akiyama (2018) hesitates to use the term stateless as well, based on an unofficial definition of the *mukoseki* problem given by the Ministry of Justice (MOJ) in a 2014 document, but argues that *mukoseki* people's rights as citizens are precarious. In contrast, Chapman (2018) argues that, according to the UNHCR 1954 Convention on the Status of Stateless Persons, *mukoseki* people would fall under the definition of stateless as someone who is not considered a national by any State. He draws on the definition of *jus koseki* by Krogness (2014), who reflects on the interactions between Koseki Law and Nationality Law, suggesting that the term *jus koseki* would be more appropriate in describing the attribution of Japanese nationality instead of *jus sanguinis*. The fact that Japanese descent does not suffice, per se, as proof of nationality, but needs to be validated by *koseki* registration, means that the fundamental precondition to be considered Japanese is registration in the *koseki*. However, Chapman (2018) adds that both definitions of *de jure* and *de facto* statelessness do not entirely apply to the *mukoseki* phenomenon and suggests that a more nuanced understanding of statelessness should be applied in the case of Japan's unregistered. I would argue that this assumption varies according to the age of the *mukoseki* person in question. On the one hand, *mukoseki* children whose parents are both Japanese are presumed to be Japanese, because they do not need to prove their nationality when applying for a *koseki.* What needs to be proven is biological paternity. But, on the other, proving to have a right to Japanese nationality is key to obtaining a *koseki* for adult *mukoseki* people. As I will explain in Chapter 3 paragraph 5, once they are adults, *mukoseki* people are suspected of being foreigners illegally seeking Japanese nationality. To add to the confusion, even though there is no official definition of what being *mukoseki* means, there have been instances where a government

representative maintained that they are *not* to be considered Japanese[4], and others where they maintained that *mukoseki* people are Japanese who lack registration. Moreover, whether or not the definition of statelessness applies also varies according to the nationality of the parents. In cases where one parent is Japanese and the other is not, the *mukoseki* child might also be stateless in the *de jure* sense if they are unregistered in both countries. This is, for example, the case of Robert, as documented by Chen (2022), who has a Japanese mother and an American father, and was mistakenly registered as Japanese by the *koseki* official in his hometown but then lost his *koseki* when they noticed it. But I would add that it should also be considered whether a *mukoseki* person identifies as stateless or not. During my fieldwork I interviewed two people who were, technically, both *mukoseki* and *mukokuseki* (stateless), and none of them identified as both. Applying the definition of statelessness to *mukoseki* people might be a useful strategy to bring this phenomenon to the attention of the United Nations, however, since the issue of statelessness is so nuanced in the *mukoseki* problem and does not always apply, I did not include nationality, or lack thereof, in my analysis, and considered *mukoseki* individuals in-between Japaneseness and statelessness. In another work, Chapman (2014) draws on Bauman's conception of modernity as based on an ideal order that removes the uncertain and unfamiliar. Modern societies seek to create this order but can never fully realize it, because the pursuit of order inevitably creates 'strangers' and 'undecidables'. Although Chapman applies this perspective to Meiji Japan and the process of nation-formation, with the inclusion or exclusion of ethnic minorities and colonial residents, the author argues that the chaos created by the *koseki* is not merely a modern phenomenon, because it is intrinsic to its operation. Although Chapman does not consider the *mukoseki* problem in this paper, I would add that Bauman's definitions of 'undecidables' can be applied to the *mukoseki* to give a sense of their in-betweenness. By doing so, not only can we understand the wider mechanism by which this phenomenon arises, but we can look beyond this particular minority and see a generalized pattern of exclusion. Which makes this rather niche topic relevant to the study of minorities in general. Similarly, we could turn this definition around and apply the term *mukoseki* to all those who are 'undecidables' to the *koseki* system. If we apply this broader definition of *mukoseki*ness, we can find instances of the *mukoseki* problem in other works, even though the authors do not use this term. For example, Tong and Asano (2014) write about *chūgoku zanryū koji*, Japanese orphans who remained in China after Japan lost the Manchukuo territory, a *de facto* colony in north-east China. In 1980's many of these children, now grown up, returned to Japan and sought the restoration of their *koseki* records, from which they had been deleted

[4] See for example the response given by Tamori Oshima, speaker of the House of Representatives, to member Seiji Osaka's question regarding *mukoseki* people on 21 February 2017. Written response available at https://www.shugiin.go.jp/internet/itdb_shitsumon.nsf/html/shitsumon/b193067.htm [Accessed on 2 October 2023].

because they were declared war dead. Another author, Kim (2014), writes about the history of the *koseki* in colonial Korea, where it was introduced by Japan. Despite being modelled on the Japanese *koseki*, the Korean one remained separate, to maintain colonial citizens (*gaichijin*) distinct from mainland Japanese (*naichijin*) and, ultimately, to create a system of sub-nationality. Moreover, the process of registering Koreans in this new register was complicated by cultural difference and the fact that migrant Koreans had to return to Korea to be registered. This resulted in the problem of unregistered Koreans, or *mujŏkcha*. Masae Ido (2017) also includes the repatriates from Manchukuo and former colonies' citizens, and even members of the Japanese imperial family who are registered in the *kōtōfu*, in tracing the history of the *mukoseki* phenomenon, therefore corroborating the wider definition of *mukoseki*ness that I propose. In contrast with Chen (2014), Chapman (2018), and Akiyama (2018), my research focuses on the causes of the 300-day problem, Article 772, and its cultural roots. This led me to focus on issues of gender discrimination instead of nationality and citizenship.

White (2018) examines the *koseki* from a gender perspective but her examination of the *mukoseki* phenomenon is limited to the cases of unmarried couples who reject the single-surname rule of the *koseki* and choose to not register their children as a form of protest against the label of illegitimacy. She examines only one of the causes of the *mukoseki* problem, which produces only a small minority of cases, and the scope of White's examination of this phenomenon is therefore limited. However, she delineates a useful theoretical frame to further analyse the *mukoseki* phenomenon. As White poignantly argues, the *koseki* is a central site for the iteration of gender (Butler, 1990) within Japanese society, and it connects socially constructed notions of gender, family, and nation. She analyses how the *koseki* system reproduces a patriarchal power structure within Japanese society through the single surname rule for married couples. Drawing from feminist theory, White uncovers what she defines *koseki* ideology (the quality of being 'inside the head' of the register), and the remnants of the patriarchal *ie* family structure, abolished in 1946, in the contemporary *ko*. Chapman (2018:2), who also looks at the *mukoseki* problem from a gendered perspective, reflects on Article 772 as the main cause of the *mukoseki* problem and argues that this legislation reproduces a patriarchal power structure and normative notions of family and discriminates against women. However, the author only examines a few *mukoseki* cases that were documented by newspaper articles and documentaries but does not include first-hand data to substantiate his thesis which, instead, is based on an analysis of Article 772 in the wider context of Japanese legislation, in particular the Japanese Constitution, and that of international law. Stimulated by Chapman's insight into the legislation, my research sets off to verify Chapman's thesis by providing ethnographic data. This phenomenon has never been

studied through ethnographic fieldwork and has never been approached from an anthropological perspective. Guiding my analysis are the voices of the protagonists of this phenomenon. So far, their stories have been documented through first-hand sources only within journalistic literature in Japanese (Ido 2018, Akiyama 2015) and they have not been considered in academic literature in English. Adding their point of view to the discussion of the *mukoseki* problem is not only a moral imperative but an epistemological one, as this phenomenon cannot be fully understood without their perspective.

As a counterweight to the emic perspective of people affected by the *mukoseki* problem it is also important to understand how this phenomenon is perceived by *koseki*-registered Japanese, as this will shed light on the stigma that weighs on mothers and *mukoseki* children themselves. In turn, it will provide insight into the reasons why it is so hard for people to speak up and create a collective movement. Chapman (2018) considers the first wave of media interest in the *mukoseki* problem that peaked in 2007 with the first newspaper articles, and in 2014 with the first documentary. Previously, the Mainichi Shinbun (2008) had published a collection of articles that resulted from the awareness campaign on the *mukoseki* issue, specifically on the 300-day problem, promoted by the same national newspaper. My research fills the gap that remains in the literature and analyses how the *mukoseki* problem has been represented by the media – including films, novels, manga, and plays, but also social media and the MOJ's website – between the early 2000s and today, to see how the phenomenon is (mis)understood by consumers, and to contrast the portrayals produced by *koseki*-registered Japanese with Ido's first-hand account of her experience as mother of a *mukoseki* child and as activist. Since anthropology has turned to the study of media in 1980s the field of media anthropology has been growing, and although my ethnography did not involve a study of Japanese media in relation to the *mukoseki* phenomenon, I did rely on anthropological literature on mass media for my documentation on how the phenomenon is represented (Ginsburg, Abu-Lughod, and Larkin 2002, Pertierra 2018), and I drew from the more recent field of digital anthropology and netnography for representation on social media (Pink 2016, Postill 2016, Gray 2016).

Ido Masae (2017), pieces together the otherwise scattered and mostly overlooked history of *mukoseki* people since the first *koseki* system was implemented. She sheds light on the ambiguity and fragility of the *koseki* system by delineating the history of unregistered people. She dedicates an entire chapter to Article 772, which she calls 'the law's wall', preventing children from having a *koseki*. On top of this historical account of the *mukoseki* problem, in all its various facets and manifestations, Ido adds her analysis of the legislation, in particular the legitimacy presumption and the 300-day rule. She examines it through the lens of gender, highlighting the various ways in which the *koseki* system

creates disadvantages for women, and she does not shy away from calling it a discriminatory, even punitive, law. Ido (2018) also wrote about her personal experience as the mother of a *mukoseki* child and her work supporting *mukoseki* adults, in a book filled with their life stories. She describes *koseki* administration from the point of view of the *mukoseki* person, outlining all its flaws and inconsistencies. She also draws from her political background and gives the reader a glimpse of the behind the scenes of the failed reform of 2007. Endo (2017), political scientist and historian, reconstructs the political debate on the *mukoseki* problem from the perspective of the ruling class and the conservative logic that prevented an amendment of the Civil Code. In contrast, my research starts where Ido's left off by analysing the political debate around the 2023 reform. The timing of my fieldwork gave me the unique opportunity to observe and analyse the political debate around the reform, throughout the entire reform process, and to witness the first amendment to the legitimacy presumption law in 124 years. The cooperation of Ido, who allowed me to shadow her during the meetings of the Legislative Committees at the House of Representatives and the House of Councillors, also gave me unique insight into *mukoseki* activism and the impact of stigma against non-normative families that prevents the formation of a collective movement.

Journalist Akiyama (2015) considers three *mukoseki* cases. If, on one hand, the scope of her research is quite circumscribed compared to Ido's (2018), on the other hand this allows Akiyama to include much more information on the three cases and to make the women's voices heard much clearer. However, her analysis is partial in that it only includes cases of adult *mukoseki* that were unable to be registered because of the abuse of the mother's ex-husband. Although Akiyama specifies that these cases cannot be representative of all *mukoseki* cases, this limited sample gives her what seems to be a distorted understanding of what the 300-day problem is. In several instances she gives a definition of the phenomenon that ties it to domestic violence, as if all 300-day cases involved the ex-husband's abuse. She might be referring to cases where the child remains unregistered until adulthood or indefinitely. In those cases, domestic violence is (almost) always the cause. She completely overlooks the hardship faced by mothers whose ex-husband was not violent, and she seems to imply that cases where the child is registered within one or two years after birth are not as serious, because they can be solved with the cooperation of the women's ex-husbands. As I will explain in Chapter 4, the situation is very different. Although both Ido and Akiyama include accounts of the direct experiences of *mukoseki* people, they do so in a journalistic manner, according to which they speak for their interviewees instead of letting them tell their stories. In this research I have included the mothers' experiences, and their stories, to uncover the hardships that they have endured, to ultimately shed light on the biased nature of the legislation. This element is crucial to understand the cultural roots of

the *mukoseki* problem and its longevity. The main cause for this phenomenon is a controversial law that allows for differential treatment of men and women regarding post-divorce childbirth. And, as I will show through the ethnographic evidence gathered in the field, the main reason why this law has not been changed for over a century is a conservative government's intention to control the maternal body. In most *mukoseki* cases, when the child is too young to advocate for themselves, their mother is at the forefront of the legal battle. Mothers are the ones carrying the burden of having to prove the father-child relationship, because the state does not trust them to be truthful about it. Even though the children are the ones paying the highest price, I will argue that it is the state's need to control women and their fertility, to bind it to the institution of marriage and to reproduce a normative notion of family, that ultimately causes the *mukoseki* problem.

2. *Koseki* registration

Despite *koseki* scholars highlighting its importance as an entry point to explore issues of nationality, citizenship, inclusion/exclusion, family, and gender, research on the *koseki* is limited both in Japan and abroad. David Chapman and Jakob Krogness (2014) edited the first and only collection of studies on the *koseki* which weaves together many otherwise isolated aspects of the Japanese registration system, to give an overview of its history, its mechanisms of inclusion and exclusion, and the socio-cultural assumptions that produced and sustained it, with a focus on citizenship. The aim of the book is to give a critical overview of the *koseki* system, both synchronically and diachronically, to look at issues of nationality, citizenship and, ultimately, identity, and further our understanding of statecraft and normative notions of family as a tool of nation formation. Some of the authors that contributed to this volume delineate various forms of gender discrimination reproduced by the *koseki* system. Ninomiya (2014) describes what happens on one's *koseki* after legal gender change, revealing the cis-het normative logic underlying *bunseki*, the separation from the parents' *koseki*, a procedure that these individuals are forced to undergo, and the obstacles to legal gender change that are in place within, and justified by, the *koseki* system such as the requirement of being unmarried. Maree (2014) uses the notion of sexual citizenship to write about the impossibility of same-sex marriage in Japan, where there is no law that prevents it but the *koseki* does not allow the registration, and therefore the legal actualization, of same-sex marriage. And Mackie (2014) explores the widening gap between the family defined by the *koseki* and real families. The author examines the difficulties of same-sex couples, international couples and couples choosing artificial insemination in having their families legally recognized and their children registered as their own in their *koseki*. Authors such as Bryant (1990) and Maree (2004) studied the strategies adopted by homosexual couples to establish a family in the eyes of the law, such as the adoption of the younger partner by the older partner. In a country

where same-sex couples cannot marry, entering the partner's *koseki* as an adopted child allows one to enjoy the same rights as a spouse. Although some authors (Bryant 1990, Maree 2004, Maree 2014, Mackie 2014, Ninomiya 2014) have analysed various forms of gender discrimination reproduced by the *koseki* system, none of them considered the *mukoseki* problem.

Bryant (1991) analyses what she calls patterns of resistance to the oppressive impact of the *koseki* on marginalized groups such as illegitimate children, *burakumin*, Koreans in Japan, but also families with adopted children and women, and government response to this friction, to ultimately understand the socio-historical reasons behind the *koseki* system's longevity. She argues that the government response has always been of a cosmetic nature, without challenging the structure of the system nor the cultural assumptions that sustain it, and this was possible because of the supposedly value-neutral nature of the document itself. Even though the *koseki* reproduces a hierarchy based on nationality, class, and gender, its operation is complex and indirect, making it difficult for marginalized groups to identify a direct causal relationship between the *koseki* and forms of discrimination. Similarly to Bryant, my research considers instances of conflict between individual aspirations and institutional normativity in the context of *koseki* registration and, in particular, in *mukoseki* cases that arise from the 300-day rule of Article 772. These are cases where mothers *could* register their children, if they were willing to have the ex-husband be the legal father, at least temporarily, but instead they choose to avoid that and pursue a different modality of registration through legal action. However, I will not use the term resistance to talk about the mothers' choice not to register their children, because «the category of resistance impose[s] a teleology of progressive politics on the analytics of power – a teleology that makes it hard for us to see and understand forms of being and action that are not necessarily encapsulated by the narrative of subversion and reinscription of norms» (Mahmood 2005:9). I will apply Mahmood's (2001, 2005) definition of agency that detaches it from a liberal feminist theory to envision it as a capacity for action that is context-dependent and that does not necessarily involve challenging hegemonic norms, nor it necessarily requires a desire for freedom from them.

> Simply put my point is this: if the ability to effect change in the world and in oneself is historically and culturally specific (both in terms of what constitutes "change" and the capacity by which it is effected), then its meaning and sense cannot be fixed a priori, but allowed to emerge through an analysis of the particular networks of concepts that enable specific modes of being, responsibility, and effectivity. Viewed in this way, what may appear to be a case of deplorable passivity and docility from a progressivist point of view, may very well be a form of agency – one that must be understood in the context of the discourses and structures of subordination that create the conditions of its enactment. In this sense, agentival capacity is entailed not only in those acts that result in (progressive) change but also those that aim toward continuity, stasis, and stability. (Mahmood 2001:212)

Mothers that are caught up in the 300-day problem do not oppose the *koseki* system, do not see a patriarchal ideology in it, nor do they challenge the idea of Article 772 being motivated by an interest in children's wellbeing. Like Mahmood's (2001) docile agents, mothers do not *resist* hegemonic norms, but they engage with them in a different way, with the aim of creating exceptions. They cherish their *koseki* registers, they do not refuse their importance. On the contrary, it is exactly because they do not want to besmirch their and their child's, *koseki* with the name of a 'stranger' (the ex-husband) that they choose to postpone the child's registration and go to court. They strive to fit the *ko*, the standard *koseki*-family, they do not want to appear different from others on their family register. They do not want to abolish the legitimacy presumption system, but they want exceptions to be made. Their children must be registered, sooner or later, or they will continue to pay a high price until adulthood. In this sense, the 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.

Another element that allowed me to better understand women's agency in this context, but also to shed light on why there is no collective movement for the rights of the *mukoseki*, is *koseki* consciousness (*ishiki*). *Koseki* consciousness is a concept used by many authors that examined the *koseki* system (Yamanushi 1962, Ninomiya 2006, Ninomiya 2014, Krogness 2008, Krogness 2011, Krogness 2013, Krogness 2014, Endo 2019) and is described as the awareness of what one's *koseki* should look like, or how one's family should appear on the *koseki*, and the consequent avoidance of acts, or registration of acts, that would tarnish one's *koseki*. It also represents the emotional attachment to one's *koseki* and the information registered therein (*koseki kanjō*). In other words, it is an awareness of the social importance of the *koseki* that emerges from a discrepancy between the *ko*, the family unit or the ideal family, and real families, as a desire to bridge this gap (Krogness 2008:331). For example, single-motherhood is frowned upon in Japan and the desire to prevent registration of out-of-wedlock birth in the *koseki* is one of the factors that influence unmarried pregnant women's choice to have an abortion (Hertog 2011). Krogness (2013) has considered how *koseki* consciousness has changed from the post-war era to the early 2000s by comparing the results of Masayuki Yamanushi's survey on *koseki* consciousness, conducted from 1956 to 1957, to his own survey, conducted in 2009, that included some of the same questions. In the 1950's respondents attributed the importance of the *koseki* to the preservation of social order, to which individuals must be subordinated, and that is necessary to the well-being of all, while the 2000's respondents linked the *koseki* to an order of the family, which they in turned linked to familial happiness. However, the responses also revealed an increased importance attributed to individual rights and a sense of

incompatibility of individual rights to the *koseki* system (Krogness 2013). Despite being a very useful tool to understand the evolution of *koseki* consciousness, Krogness' survey did not aim at understanding how *koseki* consciousness might be experienced differently by people of different genders.

The concept of *koseki* consciousness is similar to that of internalized surveillance that Chapman (2008:428) describes. He uses the 2003 Tama-chan protest, which saw foreign residents of Yokohama protest against the awarding of a residence register to a seal that famously frequented the Katabira River, as a starting point to examine both the residence register and the *koseki* and shed light on processes of marginalization of foreign residents in Japan. Foreign residents of Yokohama used the incident that involved the seal to raise awareness on the fact that despite being long-time residents and paying taxes in Japan, they were excluded from the residence registry because of their nationality. Chapman (2008) draws from Foucault's metaphor of the panopticon, Jeremy Bentham's ideal prison that the philosopher used in his analysis of modern power, to explain the type of control exercised by the *koseki* as a tool of surveillance and disciplining of the population through the notion of the family-nation, from the Meiji era onwards. He argues that the *koseki* creates a «state of conscious and permanent visibility» (Foucault in Chapman 2008:433) in its registrants through a decentralized, diffuse, and disembodied gaze. My research picks up Chapman's suggestion to use Foucault's concept of governmentality in analysing the Japanese *koseki* but brings it further. My thesis is that what the authors mentioned above call *koseki* consciousness is the manifestation of the normalizing gaze internalized by *koseki* registrants. I further argue that *koseki* consciousness is a gendered self-technology, in Foucauldian terms as elaborated by feminist theory (Macleod, 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» (Rose 1996:135) and that, on a macro-level, relies on dominant discourses and assumptions on gender and sexuality. I also connect the concept of *koseki* consciousness as a gendered technology of the self to the politics of emotions (Lutz, Abu-Lughod 1990; Ahmed 2004), and in particular the politics of shame. Anthropology has long demonstrated that emotions are not just psychological states, internal to the individual, but are social practices (Lutz, Abu-Lughod 1990; Rosaldo 1984). Shame has been examined in this light by many authors in the field of social sciences (Biddle 1997; Ahmed 2004; Fischer 2016; Gabel 2018; Cohen Shabot and Korem 2018; McBrien 2021). Ahmed (2004:103) writes that «shame feels like an exposure – another sees what I have done that is bad and hence shameful» and defines shame as a relational feeling that cannot exist without the gaze of the other. It requires a witness. 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 2004:104). Drawing on this notion and based on ethnographic data, I will argue that in the context of the *mukoseki* problem, *koseki* consciousness produces gendered shame in mothers of *mukoseki* children. According to Ahmed, the feeling of shame is the embodiment of a conflict between the self and an ideal self, and this ideal is «what sticks subjects together» through the «desire to be 'like' an other, as well as to be recognised by an other» (Ahmed 2004:106). The *koseki*, or the lack of it, is the place of production and reproduction of this ideal self, and the ideal family, of which *koseki* registrants are always conscious. This *koseki* consciousness manifests itself as a desire for one's *koseki* to be like others', and shame in those whose *koseki* is different. In Chapter 4 I will argue that this shame is the main reason why mothers and children are afraid to speak out and advocate for themselves publicly.

Most research on the *koseki* identifies the lingering presence of *ie* ideology in the contemporary Japanese context, even though the *ie* as a term has been abolished from the Civil Code in 1947 and the family unit of the *koseki* has changed into the nuclear *ko*, and authors argue that it is these vestiges of an anachronistic family notion that cause discrimination (Bryant 1995, Wada 2000, Paulson 2010, Krogness 2013, White 2018, Endo 2019). For example, Endo (2019:9) argues that the fact that it still is customary for women to enter the husband's *koseki* when they get married, which was one of the fundamental principles of the *ie* family in the Meiji era, means that although after the post-war reform it is no longer mandatory, the rules that governed the *ie* remain alive and strong. Similarly, Krogness (2013:249) points out that the widespread use of the expression '*nyūseki suru*' (enter the *koseki*) to indicate marriage signals the influence of *ie* ideology on the contemporary *koseki*. Wada (2000) argues that while the idea of the *ie* was abolished in the Civil Code, the administrative structure in which the *ie* fit in, the *koseki*, remained, and this, according to Wada, kept the idea of the *ie* alive and impeded the democratization of the family. Similarly, White (2018:20) argues that while the new Constitution guaranteed equality, the hierarchical principle of the *ie* was preserved in the *koseki*, and this had a lasting influence on families. She gives the example of the *tsuzukigara* column, that lists children by birth order, as representative of a hierarchical relationship to the head of household and a remnant of the importance of succession in the *ie*. However, controlling the population by enforcing a normative notion of family is as much a phenomenon of the past as it is a contemporary phenomenon, since the *ie* has merely been replaced by the contemporary *ko*, another arbitrary standard family. Moreover, the term *ie* as an analytical category carries some risks. In post-World War II Japan, the *ie* was a key concept the anthropological study of kinship, which resulted in «a type of holism that saw Japanese society as a whole as a household-like entity» (Ryang 2004:140). Nakane's (1970) work,

which used the *ie* and its governing principles to explain every aspect of Japanese society and represented Japan as a society with hardly any ethnic diversity or class conflict, influenced many western and Japanese anthropologists alike. The *ie* as a key concept to understand Japanese society as a whole was also used politically in *nihonjinron* books, texts that claimed to define 'Japaneseness', to explain the uniqueness and superiority of Japan and the Japanese (Befu 2001, Oguma 2002). Applying the notion of *ie* to the contemporary *koseki* and to discuss how the *ie* survives within it even though it is no longer the unit of the register, and no longer the normative notion of family, carries the risk of depicting the Japanese family as fixed and static instead of a place of change, fluidity, and negotiation. And echoes both the structuralist theory of Nakane and *nihonjinron* literature, which presented the hierarchical *ie* as a defining characteristic of Japanese society. So, instead, in my analysis I chose not to use the *ie* as an analytic category in relation to the *koseki*, but to attribute the discrimination created by the *koseki* to a patriarchal, nationalistic, cis-heteronormative ideology that is produced and reproduced in and through the registration system.

3. The Japanese family

Many authors have examined how the normative notion of family changed from the post-war era on, and how real families transformed and adapted to an evolving socio-cultural, economic, and political context in Japan (White 2002; Rebick and Takenaka 2006; Alexy and Ronald 2011; Aoyama, Dales, and Dasgupta 2015; Alexy and Cook 2019). Between the 1950s and the 1980s, Japan experienced a period of relative social and political stability, and rapid economic growth. The emergence of consumption-oriented culture and the fact that many families became more affluent widened the middle-class and created a sense of social homogeneity (Alexy and Ronald 2011). This was reinforced by company employment policies such as lifetime employment, occupational welfare, seniority-based wage increase, and company housing, which made the white-collar *sarariiman* the male breadwinner ideal, and the professional housewife (*sengyō shufu*) his ideal companion in public and media discourses which normalized this polarization of gender roles within the workplace and the home. In Hidaka's (2011:112) words, «salaryman masculinity became entrenched in the 1950s and 1960s in Japan, creating a distinct division of labour based on a heterosexual complementarity». While husbands devoted themselves to their job and their company, their wives devoted themselves to the house and the children. Although far from being the only existing family configuration, the notion of the ideal family came to be represented by the salaryman/housewife couple. Post-war housing policies included public housing production, which promoted a transformation of the domestic space into a single-family unit for nuclear households, and government housing loans which incentivised homeownership, which ultimately projected onto Japanese society a hegemonic life-course pattern

aimed at homeownership, or *mai hōmu*, 'my home' (Hirayama and Ronald 2007). Over the decades following the burst of the economic bubble of 1989, however, the social and political landscape changed significantly. In the early 1990s, the political landscape saw the first, although short-lived, shift in power when the LDP lost the national elections for the first time since 1955, which resulted in the formation of new coalitions and consequent greater democratic competition. The prolonged economic recession that followed the collapse of the bubble reconfigured the employment sector as neoliberalist policies were introduced and companies started to rely more and more on cheaper irregular labour and their commitment to employees' welfare waned. As a result, poverty and homelessness rates spiked, prompting a polarization of society (Nishizawa 2011). Income security that derived from life-time employment, employment benefits, and seniority-pay structures, which had been the foundation of middle-class white-collar families, was undermined. Much of the demand for cheap labour was filled by women workers and this contributed to a reconfiguration of gender roles in the family, which could no longer rely on a single income. The housing market also changed significantly as housing prices rose and homeownership became increasingly difficult to achieve. Most significantly, there were profound demographic shift that changed the image of the Japanese family and shook the foundations of the normative family ideal. Increase in life expectancy and the steep decline of the fertility rate well below replacement level made Japan the most rapidly ageing society in the world. The age of marriage has been consistently rising and there is an increase of marriage refusal rate which contributes to the declining fertility rate, as childbirth is strongly associated with marriage in Japan (Nagase 2006, Hertog 2009, Ezawa 2016), and the most numerous household configurations have been single-only or couple-only (Hirayama 2011). These demographic trends which started to emerge more evidently in the 1990s prompted much academic and public debate on the family 'in crisis', and family-related matters have been pressing issues on the state's agenda. Conservative politicians view families as simultaneously dangerous to society and in danger, something to be protected but also something to be kept under control, lest it cause social chaos (Toyoda and Chapman 2019) and, as many authors have argued (Paulson 2010, Chapman 2014, 2018; Maree 2014, Mackie 2014, White 2014, 2018; Endo 2019) the *koseki* has been a fundamental tool in the hands of the political élites to shape normative notions of family since the Meiji era. Since the beginning of the demographic transition, women have been at the centre of the media and political debate, and they have been the target of public policies aimed at increasing the fertility rate. Among the causes of the falling birth rate, women's increased participation in higher education and in the work force, and the difficulty of balancing childrearing and career, are deemed as some of the most impactful. A notable example of the recent state's concern in women's reproductive choices is that of former prime minister Shinzo Abe's *Womenomics*, a set of policies aimed at increasing women's

participation in the workforce by creating the conditions for them to 'be themselves' in the workplace (*jibun rashiku hataraku*), i.e. longer maternity leave and flexible hours to allow them to keep working and raise children. The problematic nature of this strategy stemmed from the fact that while on the surface it aimed at achieving equality in the workplace, the ultimate goal was patching up the national economy with a new influx of workers and increasing the birth rate, along the lines of what Schieder calls 'trickle-down feminism' (Schieder 2014). According to these policies, women should work but also «shoulder the brunt of childcare and housework, find a spot in daycare for the baby despite lengthy waiting lists, put up with a corporate culture that is unfriendly to parents, and hope that the in-laws or their own parents do not fall ill, lest they be requested to provide eldercare» (Roberts 2016:48). In other words, Abe's cabinet response to the fertility crisis was to implicitly place the blame on women and on their transgression from the normative gender roles in the home and in the workplace. *Womenomics* as well as other policies aimed at raising the fertility rate have not inverted these trends and, as of 2020, Japan is the oldest society in the world, with 28.7 of the population 65 years of age or older (Kingston 2022), the demographic crisis is heavily impacting Japan's economy, and it keeps being one of the major concerns for the Japanese government. In 2022 Japan broke two new records as all 47 Japanese prefectures reported a population drop and the total Japanese population fell by 800.000, and in January 2023, prime minister Fumio Kishida addressed the birthrate and said that it is 'now or never' and further commented that the «nation is on the cusp of whether it can maintain its societal functions» (The Guardian 2023). In the context of such bleak demographic trends, the government's unwillingness to remove the obstacles that prevent the registration of *mukoseki* children might seem irrational. But it is also an indication of how high the stakes are. Far from being an easily solvable problem, as it may seem from the point of view of a Western observer, the *mukoseki* phenomenon stems from the inevitable contrast between what real families look like and deeply rooted cultural notions of normative family. Thus, solving this problem would require changing the normative institution of marriage and allowing a more equal reconfiguration of gender roles in the family. There is much more at stake than what meets the eye, and in such context of demographic crisis and the anxiety that comes with it, anything that might be perceived as a threat to 'the family' meets the iron fist of conservative politicians. Within scholarship on the Japanese family, some authors considered how the standard *ko* of the *koseki* impacts real families (White 2002, Goodman 2003, Maree 2004, Hayes 2008, Steinhoff 2008, Krogness 2011, Hertog 2011, Nishizawa 2011, Alexy 2011, Omori 2016, Goldfarb 2019) but there has not yet been any discussion of what the *mukoseki* problem can tell us about notions of family and family-making in Japan. In this thesis I will consider this phenomenon to shed light on gender roles in the family. Further, I will address the role of consanguineal ties in defining the parent-child relationship in

contemporary Japan, through an analysis of the legitimacy presumption system and the political debate around its reform.

The 300-day problem raises questions about the weight of genetic ties in defining the parent-child relationship in contemporary Japan, especially the father-child relationship, because the legitimacy presumption and its 300-day rule seem to prioritize a notion of paternity that is established by legal marriage, regardless of whether the child was conceived with the husband. Scholars of the Japanese family might sense, here, an echo of the importance placed on securing succession for the *ie*, which often required adoption of distant kin or non-kin in early modern Japan. However, in Chapter 4 I will illustrate how the notion of legal paternity, that is independent from consanguineal ties, is strategically mobilized by Japanese conservative policymakers to resist change and does not reflect socio-cultural notions of kinship. On the contrary, if anything, the *mukoseki* problem confirms the importance of 'blood ties' in contemporary Japan. To shed light on processes of kin-making ant the role of consanguineal ties in defining the father-child relationship it will be useful to look at the practice of adoption, of kin and non-kin children. According to Bachnik (1988:14), Japan has a 1300-year long history of adoption, in various forms and for various purposes. Adoption to secure a male heir and the continuity of the family name, property, and social status was particularly common among members of the warrior class in the Tokugawa era (Lebra 1993, Paulson 2010, Yonemoto 2019). Differently from most pre-industrial societies, between the sixteenth and nineteenth centuries Japan experienced a relatively low fertility rate, which combined with the Confucian principles that created strict succession rules based on male primogeniture, made adoption absolutely necessary (Yonemoto 2019).

> To a greater degree than their contemporaries in China and Korea, early modern Japanese families adopted adults and children, men and women, kin and non-kin in an exceptionally free and unregulated manner. Although the form, practice, and ideology of adoption in Japan shifted significantly after the late nineteenth century, the importance of adoption – in particular the adoption of adults and, within that category, of sons-in-law – in maintaining the Japanese family system in ways that, notably, benefited both men (directly) and women (indirectly) has few parallels in world history. (Yonemoto 2019:48)

There was a particularly high incidence of adoption of sons-in-law, distant kin or non-kin who married the families' daughters, because it was a strategy that allowed families to have a male heir who would carry the family name and to ensure consanguineal descent albeit through the matriline. Adoption was vital to warrior élites of the Tokugawa era also because they were prohibited to engage in commerce or agriculture and their only wealth consisted of their title, which had become almost entirely hereditary by the eighteenth century, and stipend (Yonemoto 2019). However, it was widespread among other classes as well. Wealthy merchants, artisans, farmers, and fishermen alike

would choose to adopt a son to establish a branch family that would increase their business (Paulson 2010:168). It was also common to sell daughters into prostitution under the guise of adoption (Kawashima 2000). Among commoners, son-in-law adoption was especially common since it allowed the family to keep the daughter at home and to keep benefitting from her labour.

> In sum, adoption, especially of sons-in-law, allowed early modern Japanese families to achieve what should have been impossible: a pattern of descent that was both patrilineal and often consanguineal, but that did not require a couple to bear a son. Flexible and frequent adoption made it possible to bypass the constraints of biology and continue the *ie* indefinitely. (Yonemoto 2019:60)

In the Meiji era, when the *ie* structure typical of the warrior class became the standard family unit in the Civil Code and the *koseki*, these flexible strategies of incorporating outsiders to preserve the family line continued and were sanctioned by adoption law which «was no longer restricted to upper class succession but was written in such a way as to permit the practices of every class» (Paulson 2010:171), with very few limitations. According to Lebra (1993:131), among pre-war Japanese aristocracy adoption offered families a flexible solution to «restore the appearance of normalcy in the case of all sorts of actual anomaly» which did not challenge the strict notions of patrilineal blood lines, but it actually maintained it through what she calls 'genealogical amnesia', a naturalization of the adoptee which assimilated him into the family virtually eliminating the adoptive relationship. Pre-war adoption was characterized by a focus on the interests of the family, not the adoptee's, who was often a member of the extended family and who was rarely a young child (Bachnik 1988:14-15). However, the post-war Civil Code, which abolished the *ie*, theoretically barred adoption with the aim of succession and continuation of the family, aiming at shifting the purpose of adoption to the protection of vulnerable children, in line with American notions of adoption (Goodman 2003). This type of adoption is a much more recent phenomenon in Japan, that has been sanctioned by law for the first time in 1988 and is categorized as 'special adoption' (*tokubetsu yōshi*), as opposed to 'ordinary adoption' (*futsū yōshi*). In special adoption the adoptee must be younger than six, or eight if they had been previously placed in the foster care of the adopting family, it requires the consent of the natal parent or legal representative, and it involves a break of all legal ties between the child and their natal parents, although the adoption will be recorded on *koseki* registers, therefore remaining traceable. However, many families who deal with infertility in Japan are hesitant to adopt unrelated children and adoption rates are comparatively low. Court applications for ordinary adoption still outnumber those for special adoption, although a percentage of ordinary adoptions might also be for children in need (Hayes 2008). As documented by Goldfarb (2019), consanguineal ties have become increasingly central in notions of kinship with the rise of nuclear families in the twentieth century, the declining birth rate, and the advancement of reproductive technologies, and the notion of family

in Japan has become increasingly medicalized. But she further argues that the meaning of 'blood ties' goes beyond conventional interpretations of biogenetic ties and that «blood ties in contemporary Japan are social constructs through which people attempt to assure themselves of intimate connection, all the while knowing the impossibility of such certainty» (Goldfarb 2019:194). In the contest of the *mukoseki* phenomenon, mothers and biological fathers seek to establish a legal father-child relationship based on consanguineal ties, and ex-husbands do not wish to be the fathers of the *mukoseki* child. What is really at the heart of the political debate on the legitimacy presumption system is not really who the father *is*, but who the father *should* be in the eyes of the State, namely, a child conceived in marriage.

4. Sexuality and reproduction

In Japan, the hegemonic notion of male (hetero)sexuality portrays men as instinctual beings with a naturally uncontrollable sex drive. Historically, this idea has been sustained by State ideology and policies, especially those regarding prostitution, which has been presented as a means to prevent rape and maintain social control in various points in time, based on the assumption that the instinctive male sexual drive requires an outlet (Burns 2005). At the beginning of the industrialization process in the Meiji era (1868-1912), prostitution was deemed necessary for the male worker's satisfaction and health and, therefore, essential to the country's economic advancement (Garon 1997:101). From the 1930s to the end of the global conflict, the Japanese state established *ianjo*, 'comfort stations', brothels where women were forced to provide sexual services to the army and navy. The sexual abuse of women was considered necessary to provide the imperial army, where «brutality among soldiers within the hierarchy was widespread, and lynching and abuse of the lower ranks occurred routinely» (Ryang 2006:48) with strong, healthy male bodies and content soldiers. Even after the war, when the system of licensed prostitution was abolished, the notion of the male body and its uncontrollable sexuality requiring a release, to avoid social disruption and to protect (some) women, continued to be sanctioned by the government, through the institution of brothels for the occupying forces «to protect 'respectable' Japanese women from rape and the purity of 'the Japanese family' from mixed race children» (Burns 2005:22). In contemporary Japan, this historical legacy contributed to the normalization of the 'sexually perverted man', the *sukebei*, which is regarded as the fundamental nature of male sexual desire (Allison 1994, Burns 2005). This discourse is not only reproduced by state ideology but is part of mainstream culture.

> Japanese men are not inherently or uniquely 'perverted'. The 'technologies' and pervasiveness of *sukebei* practices and the commodification of eroticised violence are derived primarily from the strength of the Japanese economy, sophisticated marketing techniques, the high level of discretionary

> capital and the consequent growth of a formidable consumer culture. The high levels of consumption and huge profits generated by sex-related industries, make these industries anything but culturally or economically marginal – although discursively peripheral to family and work. […] While a 'perversion' is generally regarded as a form of mental illness, in this case, a 'perversion' is defined as normal but peripheral to dominant practices (Burns 2005:24)

By virtue of these dominant notions, men who engage in paid sex, whether single or married, receive greater tolerance than women (Allison 1994:101, Borovoy 2005:45-46, Burns 2005:31, Ho 2015:31) and extra-marital affairs, although frowned upon, are considered a typically male behaviour (Ho 2012). In contrast, since the Meiji era women's sexuality has been, and is, seen as something to be contained and controlled, lest it cause social chaos and disruption in the family. While in the Tokugawa era the majority of women, especially commoners, were not held up to particularly rigid codes of sexual morality, virginity was not a moral imperative and divorce rates were high, 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 (Burns 2005, Ryang 2006, Ho 2012). During the first and second world wars, state propaganda gave women the double responsibility of replenishing the workforce and raise a new generation of soldiers. The National Eugenics Act of 1940 set a goal of increasing Japan's population to 100 million by 1960 and urged women to have five or more children. But, as Ryang (2006:67) notes, it was under the American Occupation, that she defines as «legal, but above all moral and educational», that a fundamental separation of sex and love, and of the prostitute and the marriageable woman, swept away previous notions of sexuality and attributed the utmost social value to virginity and chastity for women. However, this cultural transition had already been set in motion.

> A significant change in the romantic life of the Japanese had already begun to take place from the very beginning of the Meiji period (1868–1912). One example […] was the influence of the Bible on the way "love" came to be translated as *ai*; another was the arrival of the *jogakusei* as the new female embodiment of romance, replacing courtesans and prostitutes. Already, as early as the Meiji period, the objects of pure love – *jogakusei* – and of sex – prostitutes – had been separated. (Ryang 2006:70)

In the post-war decade, new sex education manuals and guidelines for schools were elaborated by the Ministry of Education around the moral principle of 'purity' and Japanese scholars, in line with this state ideology, also started warning against female masturbation and pre-marital sex, producing a powerful 'purity education' (*junketsu kyōiku*) which was particularly targeted at (some) women, young and educated schoolgirls, who would eventually become 'good wives' and 'wise mothers' (Ryang 2006). Post-war sex education heavily emphasized virginity for women and the control of female sexuality, while prostitution was increasingly deemed immoral and prostitutes as morally compromised women who posed a threat to the family. Discourses of love created a divide between

physical and sexual relations, relegated to the realm of paid sex, and 'pure' marital love, which was sexual only for procreation, and for «"good girls," therefore, sex became available only within the cage of marriage and only until all of the babies were born» (Ryang 2006:74). In contemporary Japan, women who seek sex for pleasure are portrayed as deviant, dangerous, and selfish (Marran 2005, Ryang 2006, Ho 2012), an image that is incompatible with that of the 'good mother'. Women's sexuality is not only conflated with reproduction, but also with marital sex. Although the number of children born out-of-wedlock in Japan is strikingly low compared to other countries, as so called 'shot-gun weddings' and abortions are more often preferred, single-motherhood is widely perceived as a social problem and is heavily stigmatized (Hertog 2009, Ezawa 2016). As Hertog (2009:26) writes, while «sex and marriage in Japan are independent of each other, there is a very strong link between marriage and childbearing». In this thesis I will argue that these assumptions regarding male and female sexuality are at the basis of the political debate around the reform of Article 772 and at the core of the legitimacy presumption itself, and that notions of sexual morality contribute to the gendered shame that the *koseki* system produces in mothers who do not register their children. Since marriage is considered the only legitimate locus of reproduction, mothers of *mukoseki* children are constructed as 'deviant' for having conceived a child with another man while still married, or soon after divorce. I will also argue that the government bureaucrats' decision to maintain the 300-day rule is a manifestation of the State's effort to control the maternal body, which is visible throughout Japan's history, from the Meiji era onwards.

Throughout the twentieth century, Japanese feminists have attempted to use the State's concern for women's fertility and ability to care for children at their advantage, to push for women's rights, especially in the workplace. In the 1910s, among feminists and labour-union women originated a debate on whether it was more effective, and desirable, to stress gender differences or equality when advocating for women's rights (Molony 1993:124). They called it the 'motherhood protection' (*bosei hogo*) debate and they focused on mothers' economic ability to rear and educate children. They sought to facilitate women's employment to allow them to support their children. Although by 1919 the debate had died down, «the debaters introduced to political and social discourse many of the terms of motherhood protection, including the phrase itself, that would be frequently remoulded during the next six decades» (Molony 1993:129), and it was later used, at various points in time, by male policymakers to limit women's opportunities within the workplace in the name of protection of the childbearing potential of the female body. In other words, the phrase was turned around and its meaning shifted to indicate women's fecundity.

> In Japan, those who have argued that the physical health of women should be protected, if only for the sake of their roles as mothers or future mothers, have frequently been those who have also contended that women are temporary, peripheral, uncommitted participants in the labour market; that they should be the first to be discharged at times of recession and rationalization; that their earnings are supplementary to the income of the main (male) breadwinner; and that they therefore merit less protection of their interests and less representation by organizations such as labour unions (Hunter 1993:10).

The *bosei hogo* rhetoric has played a very important role in the political discourse on female labour force participation ever since, remaining latent during the 1950s and 1960s, only to re-emerge in the 70s and 80s during the debate on the Equal Employment Opportunity Law, and has been used both to deny women equal conditions and wages, and to facilitate working mothers (Molony 1993). Japanese feminism, unlike American feminism, saw in motherhood the possibility of giving women their rights and their power back, but it did not grasp the limitations of an idea complicit in the ideology of the state (Nemoto 2016). It is in light of this legacy and within this socio-historical context that the choices of feminist activist Ido Masae and progressive politicians alike, when advocating for *mukoseki* rights, should be interpreted. I will refer to *bosei hogo*, its uses and misuses, and its legacy within the political discussion around the reform of the legitimacy presumption system to shed light on the socio-cultural reasons why the *mukoseki* problem is never discussed as a women's rights issue, by both sides of the debate.

Chapter 3 – The context

1. The history of the *koseki*

It is generally assumed by many Japanese, although incorrectly, that the *koseki* system that is in use today can trace Japanese genealogies back for more than a thousand years and that, consequently, it is an indispensable part of Japanese culture and a 'beautiful tradition' that must not be lost. The assumption is likely based on the fact that household registration has been used in Japan since the ancient period. Scholars of the *koseki* (Endo 2019, Chapman 2011, Chapman and Krogness 2014), on the other hand, describe it as a tool that political élites have used for different purposes in different historical periods, but with the common aim of population control. Let us look at the history of the *koseki*, from its ancient predecessors to the present day, to understand its functions and purposes throughout the centuries. As Mori (2014) argues, it can be divided into three stages: ancient, early modern, and modern *koseki*.

1.1 The ancient *koseki*

The oldest *koseki* records were found in Fukuoka prefecture in 2012 and are dated from the Asuka period (592-710) (Yomiuri Shinbun, 2012). According to *Nihon Shoki* (The Chronicles of Old Japan), even though compilation of *koseki* registers had previously been conducted in certain provinces and for particular classes, it is with the Taika Reforms of 646 that a decree established unified administration «family registers [*koseki*] and yearly tax records [*keichō*]» (Endo 2019:93). Based on Confucian ideas and philosophies from Tang China, the Taika Reform (*taika no kaishin*) was a set of political innovations that aimed at centralizing and enhancing Imperial power. The reforms followed the coup d'état led by Prince Nakano Oe, who later became emperor Tenji, and Nakatomi Kamatari against the powerful Soga clan, which had dominated the imperial court for fifty years prior. The political innovations were aimed at extending the direct dominion of the emperor nationally, under the fundamental principle of 'the emperor's ownership of land and people' (*kōchi-kōmin*). To centralize power and secure tax collection the 'law of the periodic reallocation of farmland' (*handen shūju no hō*) was enforced (Endo 2019). Organizing society by creating a registration system based around the household was instrumental to such process. This ancient *koseki*, called *kōgo-nen jaku* or the 'year of the horse register', was established in 670 during the reign of Emperor Tenji (Mori 2014). It was compiled every six years and used to implement the reform, mainly as an instrument to determine land and tax distribution. But it also identifies social status, clans (*uji*) and hereditary titles (*kabane*). And it was a means to enforce conscription. But between the late Nara period (710-784) and early Heian period (794-1185), it became increasingly difficult to use the register as a means of

population control, because many refused to enter a register or falsified the registered information to avoid paying the heavy taxes. Moreover, there were more and more estates controlled by aristocrats or religious institutions that received levy from common people, therefore eroding the *kōchi-kōmin* principle. Consequently, by the tenth centuries the ancient *koseki* started to lose its main functions of tax collection and enforcement of conscription, and by the Kamakura (1185-1333) era it had mostly fallen into disuse (Endo 2019).

1.2 The early modern *koseki*

Much later, the Warring States period (*sengoku jidai*, approx. 1476-1568), saw a short come-back of the *koseki* system. When the Onin War began, there was a need for both soldiers and labourers to build fortifications, and so feudal lords continued to rely on some sort of status register to gather information on people and resources (Endo 2019). But it is not until the Tokugawa era (1600-1868) that the *koseki* system was widely used again in the form of the early modern religious affiliation register (*shūmon ninbetsu chō*). By this time Japan consisted of administratively independent feudal domains, and registers were used for a different purpose compared to the ancient *koseki*, to consolidate control of the territory and control population movement. To enforce the 1641 ban against Christians, the Tokugawa government required Buddhist temples and Shinto shrines to verify that affiliated individuals were not heretics with a religious affiliation census, the *shūmon aratame* (Paulson 2010), which resulted in the homonymous register, the *shūmon aratame chō*. Another register worked parallel to the one administered by temples and shrines, the *ninbetsu chō*. It recorded personal information such as name, age, sex, status, birth, and death, and it served the purpose of taxation and assigning corvee labour. It identified population through social status (*mibun*) and firmly anchored people to their domicile to strengthen a ban on migration and changes in social status that served to guarantee agricultural productivity as well as maintain political control and social order (Chapman, Krogness 2014). During the early eighteenth century, however, the two registers were integrated into one, creating the *shūmon ninbetsu chō*, administered country-wide (Endo 2019). This household register was the basis for population reports made to the *shōgun* in 1721, 1726, and at six-year intervals after that, until 1852 (Paulson 2010). But this early modern *koseki* was riddled with inconsistencies. Without a unified law that regulated census procedures, the registration system was far from unified. Census procedures varied greatly from province to province, members of the warrior class and Buddhist monks and nuns who carried out the religious affiliation census were exempt from registration, and, additionally, the registration of certain categories of religious workers and religious entertainers was administered by temples and shrines (Endo 2019). While registration of outcaste *eta* and *hinin* people, who were at the bottom of the social hierarchy comprised of warriors, farmers,

artisans, and merchants (*shi nō kō shō*) classes, was administered by Danzaemon, appointed leader of the Edo outcaste by the Tokugawa government (Amos 2014). As Endo argues, «although its function centred on both the religious affiliation survey and population census, the major purpose of the *shūmon ninbetsu chō* system, like that of the ancient *koseki* registration system, was to police» (Endo 2019:97) yet it was not a comprehensive registration system. When in the late Edo period (1603-1868) there was a rise of population mobility between rural areas and cities, and a severe famine caused an influx of homeless people into Edo, the *ninbetsuchō*'s function of recording residence information was partially compromised.

1.3 The modern *koseki*

On April 4, 1871, the Grand Council of State (*dajōkan*) promulgated Edict 170, which announced the introduction of Koseki Law and a new *koseki* system, to be enacted the following year. This new *koseki* is generally referred to as *jinshin koseki* because the name of year 1872 according to sexagenary cycle was *jinshin*, which means 'faithful to the emperor'. The historical context in which the development of the modern *koseki* system takes place is that of the Meiji Restoration. After the Boshin War which saw the victory of the pro-Imperial forces, imperial rule was restored under Emperor Meiji in 1868. The Meiji government then embarked in a series of legal reforms which produced a new constitution and parliament in 1890 and a reformed Civil Code in 1898. Among the intentions of these reforms were a centralization of bureaucracy through administrative restructuring of the former feudal domains, to be turned into prefectures under the control of the Meiji government, and the unification of the people (*kokumin tōitsu*) in one nation. The *koseki* system played a key part in this reconfiguration of governance and society into a modern nation-state. In the preamble to Edict 170 it is stated that a new and improved *koseki* was necessary to provide protection of the people by the State and to bring order to society over what is defined as the 'chaos' of the Tokugawa era (Chapman 2014). According to Chapman (2014:94), the «intended trajectory» went «from disorder to order, uncivilized to civilized and pre-modern to modern». Another aim expressed in the edict was to succeed where previous registration systems had failed and to account for every household and every individual. This required a definition of the Japanese legal status, in other words, identifying the Japanese (*kokumin*) and, in contrast, the outsiders. First with the frontier territories of Japan and later with the colonies, the *koseki* was used to either include or exclude among nationals their inhabitants, not considered to be 'true' Japanese, to consolidate the borders of the emerging modern nation (Chapman 2008:429). It was against this backdrop that the image of the Japanese took shape. Abolishing the previous class system (*mibunsei*) and entering all nationals into the *koseki* system as *heimin* (commoners), without reference to social class or rank, was necessary to create national

unification (Endo 2019:104, Chapman 2014:95). For example, individuals that had previously received special treatment as 'unworldly people', like Buddhist monks, were also registered in the general *koseki* as *heimin* (Endo 2019). However, some elements of the feudal hierarchical ideology remained in the *koseki* as *eta* and *hinin* people were registered as 'new commoner' or 'former *eta*' following the Emancipation Edict of 1871, which still clearly labelled them as former *eta*/*hinin* and made them second-class citizens (Amos 2014). Another new element of the modern *koseki* was the concept of *honseki*, translated as 'ancestral place' or 'place of registration', which is different from place of residence, and it indicated the place where the original *koseki* copies were held for each household. It was a necessary criterion of identification, alongside name and address, in the context of increasing migration which made it difficult to grasp the population based on current residence (Mori 2014). An element of continuity of the modern register with the previous *shūmon ninbetsu aratame chō*, was the household (*ie*) as the basic unit of the register. However, the administrative *ie* of the modern *koseki* was different from that of the previous register, which constituted a domestic unit or a business entity that was identified differently in the different domains. It was a standardized ideal *ie*, which assumed fixed characteristics through the practice of registration (Mori 2014). The modern *ie* was first laid out administratively through the *koseki* system and the 1871 Koseki Law, and then sanctioned and regulated by the Meiji Civil Code, and the simultaneously enforced reform of the first Koseki Law, in 1898. As mentioned above, the notion of *ie* as the unit of the register had been flexible throughout the Tokugawa era. Family configurations varied regionally. There were regions where families had strong authoritative household heads, and regions where this authority was comparatively weak, and there were regions where the successor to the household head was the youngest child (ultimogeniture), instead of the eldest, and others where the first-born succeeded regardless of gender (Mori 2014). There were also class differences, for example, ultimogeniture and matrilinear inheritance were common among farmers and merchants of western Japan (Ronald and Alexy 2011:3). The patrilineal stem family based on primogeniture which the *koseki*'s *ie* resembles was common in the warrior class, which made up six to ten percent of the whole population (Paulson 2010). As Bryant (1995:2) writes, «although this structure proved convenient for the government in many ways, such as centralization of authority, collection of taxes, and disbursement of public goods, historical and anthropological data do not support the idea that the *ie* as conceptualized in the family registration system has ever been the exclusive or even predominant model of family structure, function or ideology in Japanese society». The *ie*, as the unit of the *koseki*, and the household head that acted as an intermediary between families and the State allowed the political elites of the time 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*)» (Garon 2010:318) where the Emperor was

the ultimate father of all Japanese subjects. With the modern *koseki* and the Meiji Civil Code the *ie* became fixed and codified. The law defined the 'family' as those who have entered the same *ie* as the household head (*koshu*). It was a multigenerational family that guaranteed continuity and inheritance generally through the eldest son (White 2018:15). The *koshu* had authority over other family members, listed in the register in hierarchical order based on their relationship to the head, who was responsible for all matters of registration and without whose consent no other member could form new family relationships. Article 750 of the Civil Code stated that no marriage or adoption that a *koshu* had refused to report could be registered, and the *koshu* also had the power to expel (*riseki*) any family member that entered marriage or an adoptive relationship without his approval (Endo 2019). There were rare instances in which, if there were no male successor, a woman could become household head, but her position as *koshu* was short-lived if she married, because her husband would assume the role according to Article 736 of the Civil Code (Endo 2019:121). *Koseki* regulations and the Civil Code formalized and strengthened the authority of the *koshu*. Such standardized *ie* imposed on the population, was shaped into an ideal family that influenced real families through the *koseki* system. The Koseki Law, first enacted in 1871, then reformed in 1898, was then reformed once more in 1914, but was not altered significantly. It was not until the post-war era that the *koseki* system substantially changed again.

1.4 The post-war *koseki*

When Japan officially surrendered to the Allied Powers on 2 September 1945, the country came under Allied Occupation, which lasted until 1952 when the San Francisco Peace Treaty took effect, led by the American military under direction of Supreme Commander of Allied Powers (SCAP), General Douglas MacArthur. The rule of the Occupation was initially focused on democratization and demilitarization, with the ultimate aim of ensuring that Japan would no longer be a threat to the Allied Powers (Kapur 2018). On a legislative level, a reform of the Civil Code, which involved more than 300 article mostly regulating family relations and succession, and a new Constitution were among the major changes that were introduced. Under the supervision of Alfred Oppler, the restructuring process was entrusted to Japanese government bureaucrats so that the reforms would organically integrate within the Japanese legal system, and they would not be vulnerable to later reactionary measures, although the occupation authorities were far from passive in this process (Krogness 2008:172). The *ie* family of the Meiji Civil Code, with its hierarchical structure and asymmetrical gender roles, was seen by the SCAP as a hindrance to the democratization of Japan and, most importantly, a tool used by the Japanese government before and during the war to inspire nationalistic sentiment via the notion of *kazoku kokka* (family-nation). Therefore, the *ie* was abolished with the

reform of the Code, and the 1947 Constitution sanctioned mutual consent and equal rights of men and women in marriage (see Article 24). However, this reform was not entirely exogenous. As many authors point out (Kuwayama 2001, White 2002, Krogness 2008, Paulson 2010), many Japanese scholars had already started advocating for the abolition of the *ie* and families never fully adapted to the ideal *ko*. After changing the Civil Code, the *koseki* system had to be changed accordingly. Japanese government bureaucrats, on which the SCAP relied for reforming the registration system, briefly considered adopting an individual based system but eventually conservative claims prevailed. The *koseki* was perceived as a fundamental part of Japanese tradition and too meaningful to Japanese people to be relinquished, and the paper shortage of the aftermath of the war would not have allowed significant changes anyway (Shimoebisu 2019). What was changed was the definition of *ko*, which could no longer be defined as *ie* according to the reformed Civil Code. While the modern *jinshin koseki* included, alongside the *koshu* and his wife and children, their lineal ascendants (*chokkei*) and, after the 1898 reform, collateral (*bōkei*) and affinal (*inzoku*) relatives (Paulson 2010:89), the post-war *ko* was now defined as a two-generational nuclear family: a married couple and their unmarried children. Most significantly, the role of the *koshu* was reconfigured to be more suitable to Article 24[5] of the new Constitution, and so his power over other family members was considerably reduced and the term *koshu* itself, resonant of the modern hierarchical ideology, was changed to the more neutral *hittōsha* (head registrant). And primogeniture was replaced by equal rights of inheritance among children. Structurally, only a few things changed following the abolition of the *ie*, such as the removal of the 'family class column', the 'former household head' column, which linked the present *koseki* to past family registers patrilineally, and the 'relationship to former household head' column, to signify a shift from the centrality of the *koshu* to the that of the married couple (Krogness 2008). Since the *koseki* system has not changed significantly since the 1947 reform, I will discuss its characteristics and functions in the next paragraph.

2. The current *koseki*, definition and characteristics

«It is as if koseki registration is a natural phenomenon that envelops people in Japan like air» (Endo 2019:7). Endo concludes with this enigmatic metaphor the six pages in which he explains in detail what the *koseki* is. According to the scholar, most Japanese would not be able to explain exactly what the register is and how it works, even though every Japanese citizen has one and will have to update it in many fundamental moments of their life, such as birth, marriage, divorce, and death. According to the author, the *koseki* is thought of as something natural, and therefore it is taken for granted like

[5] Accessible at: https://www.japaneselawtranslation.go.jp/en/laws/view/174

the air we breathe. And just like a natural phenomenon, according to the author, the family register remains a complicated and obscure mechanism to most people.

> The majority of people – whether government officials or ordinary citizens – have limited personal engagement with the *koseki* registration system. In other words, awareness of the system is something inscribed externally. […] even those in official positions with responsibility for *koseki* registration administration fulfilled their duties without really understanding exactly how *koseki* registration procedures worked. (Endo 2019:7)

The current Koseki Law was promulgated as Law No. 224 on 22 December 1947, and is a subsidiary law of the Japanese Civil Code, which implements legal provisions regarding marriage, adoption for the purpose of family line continuation, and other family relationships that are within the competence of the Code. As Endo (2019) points out, this taken-for-grantedness of the *koseki* system, is evident in Koseki Law. As a matter of fact, although it is common practice for the first article of a law to define its purpose and nature, Article 1 of Koseki Law does not give a definition of the *koseki* but, instead, states that 'the head of the municipality in question will have principal carriage of the administration of the *koseki* register'[6]. So what is the *koseki*? A definition can be sought in its functions, what the registry *does*. The *koseki* is the system that identifies Japanese citizens, adopted in 1872 and in use today under the terms established by the 1947 reform. Its basic unit is the family (*ko*) rather than the individual, unlike most other countries. In this document citizens are registered alongside their family members and all relationships between individuals are clearly specified and regulated (Wada 2000). All marriages, divorces, births, adoptions, deaths of each member of the *ko* will be recorded on this same document. The *koseki* thus documents the family history of the one-generational nuclear *ko*. The word *ko* is different from *kazoku* or *katei* (both translatable as 'family'), and means 'unit', in the sense of indivisible part. In a juridical sense it is understood as a family unit. According to current Koseki Law, the *ko* is defined as *fūfu to mikon no ko*, a married couple and their unmarried children. Furthermore, since in the Japanese Civil code marriage is defined as between a husband and a wife, in defining their rights and duties within marriage, it implicitly defines marriage as only heterosexual[7]. The standard model for this *koseki*-family has not always been the same but has changed over time, not so much to accommodate the transformations and regional variations of real families, as much as to serve the needs of the political élites. Although the 1947 reform eliminated the role of *koshu* and his authority over other family members but, as many scholars argue, the patriarchal structure and male-centeredness of the *koseki* still persist (White 2018, Mackie 2014, Ninomiya 2014, Endo 2019). First, *koseki* registers are still indexed by the name of one of the *ko* members, who is no longer labelled

[6] The law translated in English is available here: https://www.japaneselawtranslation.go.jp/en/laws/view/4409
[7] Although the explicit prohibition of same-sex unions does not appear, the section relating to marriage of the Japanese Civil Code always refers to spouses as 'husband and wife'.

as 'household head', but as 'first registrant', *hittōsha*. Despite the use of this new gender-neutral term, the *koseki* and the *ko* are still structured around this one member of the family unit who is legally responsible for registration. Although it is possible for either the husband or the wife to become first registrant in their shared *koseki*, in 96 percent of marriages the *hittōsha* is the male spouse (Ministry of Health, Labour and Welfare 2007). Being the first registrant does not only mean having the legal responsibility for registering information about one's household on the *koseki*, but it also means that other family members will adopt the surname of the *hittōsha*, as it is required that all *koseki* registrants share the same surname. According to Article 750 of the Civil Code, which requires that the spouses share a surname, that of the *hittōsha*, one of the spouses will inevitably have to change their surname. The male-centredness of the *koseki* – considering that in most cases the first registrant is a man – is evident in the *tsuzukigara* column, that is, the section of the *koseki* that reports the relationship of family members with the *hittōsha*. The *koseki* lists, after the first registrant, the spouse's name, and the children's names by birth order, specifying the relationship in the *tsuzukigara* column. To give an example of this centrality of the *hittōsha* in the *koseki*, it will be useful to use consider the case of a woman who marries and enters the *koseki* of her husband with her children from a previous partner. In a *koseki* where the new husband is the first registrant the woman's children will be registered as 'adopted children'. Although they are the biological children of the woman, since the new husband is the *hittōsha*, their label on the register will be defined by their relationship with him and not with their mother[8]. It can be argued that the *hittōsha* still bears a strong resemblance to the role of the *koshu*.

As mentioned, the post-war *koseki* is centred around the institution of heterosexual marriage. When a man and a woman register a marriage certificate, they will both leave their respective parents' family registers, and create a new one together. Same-sex couples and unmarried heterosexual couples will not be able to share a *koseki*, and therefore will appear single on their records. They will still be considered the 'unmarried children' (*mikon no ko*) of their parents. Their names will remain in their parents' *koseki,* or they can create an individual *koseki*, after reaching twenty years of age[9]. Another characteristic of the *koseki* is the permanence of information. The registry documents all status changes of every family member, and all information is always available once registered, even when it is modified. In fact, every marriage, divorce, birth, death, adoption, legal gender change, change of

[8] 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. On her document, her relationship with the *hittōsha*, her stepfather, was highlighted, not that with her mother.
[9] This procedure is called *bunseki*.

ancestral residence (*honseki*) will be always legible in the *koseki* shared by all family members. Even when a person leaves a *koseki* and enters a new one, after a marriage, divorce, or adoption, their name will always remain in the previous one. The *koseki* not only provides what we can call a static image of the family configuration, in its current configuration, but it also shows all the transformations that the *ko* has undergone over time. This feature was extremely problematic when *koseki* registers were easily accessible to third parties, because there were no regulations in terms of privacy. It was common practice among employers and prospective in-laws who wanted to get background information on a potential employee or spouse, to request that person's *koseki* (Chapman 2011). Because of this persistence of information in the register, by reading this document one could find out if anyone had *burakumin*[10] origins (Neary 2009), was or had been married, was divorced, had illegitimate children, and more. Only in the late 1990s did *koseki* registers become private and accessible only to those registered in the *koseki*, or to the spouse, and the direct ascendants or descendants. However, it was not until 2008 that it became compulsory to present an identification document when requesting a copy of the *koseki*, and until then privacy laws were not technically enforced. Tied to the permanence of information in the register is the cross-referencing function of the *koseki* system, that adds a new level of control of information on the population. Each new register is clearly linked to past ones, through the indication of the ascendants of the *hittōsha*, and through the *honseki*, the place of registration. This function allows to trace back someone's genealogy through several generations. Not only for the *hittōsha*, but for all other members of the *ko* as well. The *honseki* also serves to tie the current *koseki* to previous. It will be useful here to do consider the concept of *honseki* since it is a one that does not have an easy translation outside the Japanese cultural context. It has been translated here as place of registration, or ancestral place, because it does not necessarily correspond to either the residence or domicile (which in Japan coincide and are registered in a different system, the *jūminhyō*) of the members of the *ko*, instead it indicates a sort of ideal address, that could be (but is not necessarily) the address of the house of an ascendant, several generations away, and which identifies the municipality that has jurisdiction over the family register. One will have to go to that local government office to access their own *koseki*, get copies, or update information.

As with the permanence of information in a *koseki* even after it is modified, this continuity with previous registers allows institutions to access all information, past and present. Because inactive

[10] *Burakumin* literally means 'village people', also referred to as *eta*, 'filth', and indicates a historically segregated social group in Japan, confined to ghettos and stigmatized. The origins of *burakumin* discrimination can be found in the stigma associated with occupations considered impure according to Shinto and Buddhism, such as tanning, butchery, and any occupation dealing with blood or corpses. In the Edo period (1603-1867) *burakumin* became a hereditary status and an unofficial caste in the Tokugawa class system (Neary 2009).

koseki (i.e. whose registrants are all deceased) are preserved for up to 150 years[11], in some cases it is possible to go back to the registers of the early Meiji period (1868-1912) starting from a register currently in use (Endo 2019). Although today it is no longer possible to access third party *koseki* without just cause, a complete copy of the register (*koseki tōhon*) or an extract from the register (*koseki shōhon*) are required to access many services such as education and healthcare. Consequently, the information recorded inevitably becomes visible to others on several occasions.

It is important to emphasize the link between citizenship and *koseki* registration. The fact that the Koseki Law, since the first draft of 1871, required that every Japanese citizen be registered in the *koseki* system, and the fact that all residents of other nationalities are required to register through a separate system, clearly marks the *koseki* as the register of Japanese citizens. The Japanese Nationality Law is based on the principle of *jus sanguinis*. The *koseki*, which provides evidence of Japanese descent is, in fact, the only proof of nationality for Japanese citizens[12]. Only if a foreign resident naturalizes will they be registered in a *koseki* as are Japanese citizens. In the case of an international marriage, where a non-Japanese person 'enters' a *koseki* by marriage, their name will be listed in a way that clearly marks as different. It will not be entered in the spouse column, which will remain empty, but in the personal annotations' column (*jikōran*). The foreign spouse will enter the *koseki*, but exceptionally: their position in the *koseki* will clearly identify them as non-Japaneseness.

Finally, a description of the *koseki* system would not be complete without the mention of the so-called *koseki* feelings (*kanjō*) and *koseki* consciousness (*ishiki*). Ninomiya (2014), Krogness (2008) and Endo (2019) speak of *koseki kanjō* and *koseki ishiki* indicating the deep emotional bond and sense of identification that exists between families and their family register. The information registered in the document is more than mere information for administrative purposes, but proof of the legitimacy of one's identity, nationality, and belonging to a family. According to Endo (2019:8) «the Koseki Registration Law has created a moral code that applies to both 'citizen' and the 'family'. […] long years of operation have given rise to a collective koseki consciousness that unquestioningly accepts discursive claims that if one is 'Japanese' then one must hold koseki registration, and that those who have no 'koseki' entry are somehow deviant». Ninomiya (2014) on the other hand, defines *koseki* feelings as the importance given to the content of one's own register and, above all, the desire to keep

[11] A directive from the Japanese Ministry of Justice dated May 6, 2010, extended the retention period of inactive *koseki* registers from eighty to 150 years (Endo 2019).
[12] Since a copy of one's *koseki* is required for the issuance of a passport, the *koseki* is here considered the fundamental proof of nationality.

it unsullied, or *kirei* ('clean' or 'beautiful'). According to the author, *koseki* consciousness and feelings related to the register were particularly strong when they were accessible to the public, because this meant that any information was potentially public, could be morally judged and reflect negatively on one's reputation and their family's reputation as well. The public nature of this information has thus created a strong awareness of how a family should be (*seitō na kazoku ishiki*) and the importance attached to maintaining such a *ko*, avoiding anything that, once registered, could make the family appear 'deviant'. Along the same lines, Krogness (2008:190) defines *koseki* consciousness in psychological terms as a «deep 'installation' of koseki into the Japanese psyche (that) also produced strong feelings – positive as well as negative – related to koseki».

> Koseki consciousness, then, is more than an awareness of koseki as a system, as a set of procedures and as a symbol. It 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 2008:189).

Although the information contained in a *koseki* today is mostly private, *koseki* feelings and *koseki* consciousness are still present. We can see its manifestation in the language, for example in the use of the phrase *nyūseki suru*, entering the *koseki*, often used instead of *kekkon suru*, getting married. *Koseki* consciousness is also evident in the stigma that still weighs on atypical situations, such as single motherhood[13] (Hertog 2011, White 2018), divorce, and common-law marriage. In this paragraph I have given a definition of *koseki*, useful for understanding the mechanisms that regulate its functioning, and listed its fundamental characteristics. Even in this first, superficial exploration, it is easy to imagine that such rigid definition of *koseki* family cannot accurately represent all the possible configurations of real families. When the relationship between two or more individuals does not fall within those recognised by the *ko*, the accurate registration of such relationship is impossible.

3. Families misrepresented by the *koseki*

In Japan, in the last decades, the proportion of adults that either delay or avoid marriage has been growing rapidly, parallel to the rapid decline in the birth rate. As a result, single-member families are now very common in Japan (Alexy and Ronald 2011; Rebick and Takenaka 2006). Although it is possible to create an individual *koseki* for a Japanese adult who decides to leave the parental one, with a procedure called *bunseki*, the *ko* is first of all a conjugal unit, and the *ko* resulting from *bunseki*

[13] In Japan, there is a very low percentage, less than 2 percent, of births out of wedlock, compared to other countries. The abortion rate is quite high, as is the number of 'shot-gun weddings' to avoid an illegitimate birth. According to Hertog (2011), this avoidance of out-of-wedlock pregnancies is also attributable to the fear that the registration of such a birth will leave an indelible mark on the register of the whole family.

does not conform to the legal definition of *ko*. It can be argued that this family of one is misrepresented by the definition of *ko* and the *koseki* system. It is interesting to contrast this case with one that we can consider, in some ways, opposite: that of an individual who is forced to leave their *koseki* and create a new 'individual' one. For people wishing to change their legal gender, *bunseki* is the necessary requirement. People who, after gender confirmation surgery, request their gender to be legally changed must leave the previous *koseki* and establish an individual one. In the new *koseki* they will be the only member, and, unlike regular *bunseki*, they will not be able to return to the parental *koseki* because the procedure is irreversible (Ninomiya 2014). Even if they do not wish to do so, they will be registered individually, outside their *ko*. No explanation is offered in the current legislation as to why such a requirement exists, but «what underlies this policy is most likely presumptions that the parents and siblings of individuals who change their gender will feel discomfort or that the family will suffer discrimination» (Ninomiya 2014:179). If, on the other hand, the applicant is married, the change of legal gender would not be possible, as it would become a same-sex marriage[14]. Another consequence of the centrality of heterosexual marriage in the definition of *ko*, is that same-sex couples are not recognized as *ko* and cannot share a *koseki*. For the State they will be considered strangers to each other despite their real-life circumstances[15]. But the requirement to be married to be part of the same *ko* can be problematic for heterosexual couples as well if they do not wish to get marriage. De facto couples are necessarily misrepresented by the *koseki*. Since de facto unions do not have legal status in Japan, a man and a woman who choose not to marry will be considered single and will not be registered in a shared *koseki*, despite being a stable couple and resembling, all in all, a *koseki*-family. As the examples of both de facto and same-sex couples show, the *koseki* system inevitably misrepresents many families who deviate from the institution of heterosexual marriage. As mentioned, marriages between a Japanese and a non-Japanese person are registered in the *koseki* system in a different way than couples in which both spouses are Japanese. At first glance, the Japanese spouse will appear unmarried in the *koseki*, and the register will inevitably appear different from that of a couple in which both spouses are Japanese. The non-Japanese spouse will not be allowed to register as *hittōsha*, a role that can only be taken on by the Japanese spouse and will not become one even in case of death of the previous *hittōsha*. An international couple will not have to share a surname, unlike couples where both spouses are Japanese,

[14] The five requirements for changing one's legal gender are listed in the Special Act, Art. 3, Section 3. In addition to the unmarried status, the person must be of age, have no minor children, have no reproductive organs, or have permanently non-functioning reproductive organs, and the person's genitals must have the outward appearance of those of the opposite sex.

[15] As discussed by Bryant (1990) and Maree (2004), same-sex couples in Japan sometimes 'mystify' their relationship on the *koseki*. Since adult adoption is very common in Japan (Goodman 2002), one strategy is for the older person to adopt the younger one (even one day old), to be legally considered a family.

as the foreign spouse has «no standing as a family member as far as the Koseki Law (is) concerned» (White 2018: 26). Registration problems can also arise when a couple conceives using assisted reproductive technologies, particularly in the case of surrogacy, because «the law privileges the status of the birth mother over genetic inheritance, because the koseki law was framed at a time before the development of artificial reproductive technologies, when the birth mother was always self-evidently the mother of any child» (Mackie 2014: 211). One case that received much media attention in the early 2000s was the Mukai-Tadaka case. In 2003, actress Mukai and wrestler Tadaka had twins through surrogacy, using Mukai's eggs fertilized with Tadaka's sperm. The couple travelled to the United States, as surrogacy was not (and is not) allowed in Japan. When they returned to Japan with their new-born twins and tried to register them, they were told that they could only register them as children of the birth mother. After a lengthy legal process, the couple's request was finally rejected by the Supreme Court in 2007 and they had to adopt the twins. Regarding assisted reproductive technologies, it should be added that, although the Japan Society of Obstetrics and Gynaecology allows artificial insemination by donor sperm in the case of a cisgender woman who married a transgender man, the Ministry of Justice stated that such children would not be recognized as legitimate. Even though in any other case Article 772 of the Civil Code attributes paternity to the mother's husband, without any genetic requirement, in this case an exception is made (Mackie 2014). As this brief exploration of some of the many family configurations existing in Japan today shows, it can be argued that the *koseki* fails in its function of population census since its rigidity creates many forms of misrepresentation (White 2018). As Chapman (2014:100) argues, the *koseki* was originally meant to create social order from social chaos, but instead it ended up creating another kind of 'chaos', with many individuals unable to fit the narrow categories of the register.

4. The *mukoseki* problem today

In Japan, parents have fourteen days to register a child's name in the *koseki* system after birth. They will go to the local government office and submit a birth certificate. Article 772 establishes the child's status within the family as soon as they are registered, by presuming the husband to be the father. It states that:

> (1) A child conceived by a wife during marriage shall be presumed to be a child of her husband.
>
> (2) A child born after 200 days from the formation of marriage or within 300 days of the day of the dissolution or rescission of marriage shall be presumed to have been conceived during marriage.

If the parents are married, they will check the box for 'legitimate child' (*chakushutsushi*) on the certificate, and the child will be registered according to Article 772. In other words, the husband will be presumed to be the father and, accordingly, the name and date of birth of the child will be recorded

in the *koseki* of the parents. The baby will have the same surname as them and will be listed by birth order: first son, first daughter, second son, second daughter, and so on. If, on the other hand, the parents are not legally married, the child will be labelled as illegitimate (*chakushutsu de nai ko*) on the birth certificate. In this case, the child will be entered in the mother's *koseki* and will have her surname. If the father acknowledges the child, the acknowledgment will be inserted in the *jikōran*, the personal annotations' column. Registration in the *koseki* certifies the child's birth, and it provides proof of identity, nationality, and relationship to family members. The child will be granted rights as a Japanese citizen. Based on the *koseki* record, then, the child will also be registered in the residence register (*jūminhyō*), a different register that allows local governments to keep track of one's current address and allows citizens access to administrative services (*gyōsei sābisu*). These include access to public facilities such as hospitals, libraries, civic halls, nursery schools, and services such as *koseki* procedures, pensions and subsidies, water supply, and garbage disposal.

The MOJ maintains that deciding who the father is as soon as the child is born, with a law that establishes a legitimacy presumption system, is in the child's best interest. Representatives of the Ministry of Justice do not elaborate on what the 'best interest' supposedly is. It is presented as a self-evident fact that Article 772 is meant to protect children's wellbeing (see paragraph 7.2 of this chapter). Most Japanese people know about the first paragraph of Article 772 and take for granted that a child conceived during marriage will be registered as the husband's child.

> Considering that we need (men) to take responsibility for their children, the most obvious way is marriage, isn't it? […] When you have to guess who is likely the father of a woman's child, well, since she is married, since they live together, it's totally natural to presume that the husband is the father. […] Everybody naturally thinks like that, I believe. So, they just made that into a law, so it's [perceived as] a good law. So everybody's happy [with it]. (Minami, 17 October 2022, Tokyo)

As lawyer Minami explained to me, since the law confirms what is the most likely father-child relationship in marriage, it appears sensible. It also appears desirable, because it prevents husbands from relinquishing all responsibilities, by automatically acknowledging the child as their own. Even if he was to leave his wife, the child would be entitled to the father's financial support and inheritance. But not many are aware of the second paragraph, that adds that the presumption of paternity will continue to work for 300 days after divorce. When a divorced woman gives birth within that time frame, according to Article 772 the child is legitimate and, therefore, the ex-husband is presumed to be the father. However, in most of these cases the ex-husband is not the biological father, and the mother will be confronted with a dilemma: if she submits the birth certificate, the ex-husband will be the child's legal father, with all the rights and duties that come with legal paternity, and the child will have his surname. She is told by local authorities that she must have her child share a *koseki* with a

stranger. The biological father will not have any legal tie to the child, and they will have to adopt the child in order for a father-child relationship to be established. If she refuses to do so, the child will go unregistered and become *mukoseki*. She cannot register the child in her own *koseki*, as a single mother would, because the child is presumed to be the legitimate child of her ex-husband. Even though she is not married anymore, it is presumed that she was married at the time of conception. The responsibility to face this problem rests completely on the mother's shoulders, as the only legal guardian of the child. As Tanaka-san, an employee of the *koseki* office of the MOJ, explained to me, «the father *de facto* and the father *de jure* are different people in the case of the 300-day problem, so the father *de facto* has no responsibility or obligation [towards the child]» (Tanaka, 29 September 2022, Tokyo). Most divorced women do not want to involve their ex-husbands in such a delicate matter soon after divorce. Especially so if the divorce was not amicable or if there is a history of domestic abuse. Since the ex-husband is not the biological father and might not even be aware of the birth of the child, and the biological father has no legal tie to the baby, only mothers can and must act on behalf of their child to solve the *mukoseki* problem.

The *mukoseki* problem is always defined by authorities as occurring when a mother, does not register their child (see paragraph 7.2 of this chapter). On rare occasions the word mother is replaced with a gender neutral 'parent'. It is not defined as an impossibility to register, but as an unwillingness to do so, because the registration itself is possible. What is not (immediately) possible is to overturn the legitimacy presumption of Article 772. It might be argued that registering the child in the ex-husband's *koseki*, as the ex's child, is still better than not registering them at all. However, doing so would have significant and permanent consequences. In the *koseki* system all information is permanent, once recorded. Even when some of the information changes (i.e. the child is transferred to the mother's *koseki* and acquires her surname), it is not deleted from the register so that it always remains legible. This has the purpose of giving the authorities the possibility of tracing not only a citizen's current civil status, their current *honseki* or their current family relations, but also past ones. In the words of Tanaka-san[16], «up to a certain point it was a certain way, so it shouldn't be possible for [that information] to disappear all of a sudden, it would be bad if it wasn't made to be traceable» (Tanaka, 29 September 2022, Tokyo). Therefore, a great concern for mothers and fathers of *mukoseki* children is that once entered in the child's *koseki*, the father-child relationship with the ex-husband, a stranger to them, will never be deleted. It will stay there, indelible, even if the legitimacy

[16] Assistant Officer (Family Register) in the First Civil Affairs Division, Civil Affairs Bureau, Ministry of Justice.

presumption is overturned in a court of law. This is how activist Ido Masae explains why choosing to register the child in the ex's *koseki* is undesirable.

> First of all, the surname. In Japan, it's usually the husband's surname, right? Because the man's surname is the one chosen [by married couples] in 97 percent of cases. So, if you have a baby and you register them in your ex-husband's *koseki*, the [baby's] surname is your ex-husband's surname. The mother has a different surname. Also, this is where parental authority comes into play. Then, to change that and to change surnames you would have to do a mediation here as well. [Because] to do that you have to register [the child] in the post-divorce *koseki* of the mother. You have to go to Family Court for that, so first of all, there is one issue. And then even if they change the surname to that of the mother, if the ex is still [legally] the father, he will have to pay for child support, or if he dies, the child will inherit. So, when he is not the real father, he will also be against it because [he will say] 'that's crazy'. Of course [he will] because it's not his child. (Ido Masae, 19 November 2022, Tokyo)

Although the MOJ, that administers the *koseki* system, does not collect any data on the matter Ido, after twenty years of experience helping divorced mothers, is confident that no more than ten percent of women choose to register their child in the ex-husband's *koseki*. She believes that only women who do not have access to information and are told by the local authorities that there is no other solution, reluctantly do so (Ido Masae, 28 December 2022, Tokyo).

Other causes for the *mukoseki* issue include child neglect, when parents willingly avoid registering a child; delaying a child's registration as a form of protest against the discriminatory mechanisms of the *koseki* system[17], cases of amnesia, in which it is not possible to trace the person's *koseki*, even if it exists; cases in which the original copy of the *koseki* is lost due to a tsunami or a fire and it is impossible to recreate it (Ido 2017). These cases are much rarer than the 300-day problem and together amount to 30 percent of total cases. There is no precise data on how many *mukoseki* people there are in Japan because they are invisible to the State. Since 2015, the MOJ has launched a recurring survey on the *mukoseki* problem based on reports made by local government offices across the country (Sakurai 2016). The various municipalities periodically send the number of *mukoseki* cases that they are aware of, and then of the cases that are solved. However the response rate is very low, only 20 percent, as most municipalities do not, or cannot, collect any data (Ido 2017). Therefore, the numbers resulting from these surveys are generally very low. As of November 2021, the survey found a total of 838 unregistered people across the country (Nagahashi 2022). These results are very unlikely to come close to the actual number of cases. According to Ido (2017), based on the number of 300-day cases that reached court in the last twenty years, which is about 3,000 every year of which about 500 do not reach a solution, there are at least 10,000 *mukoseki* people in Japan today (Ido 2017). Ido considers the last twenty years, because she assumes that most *mukoseki* cases are likely to be

[17] For example, see some cases reported by White (2018) of members of the fūfubessei movement, who to protest against the system that until 2005 required de facto copies to register their children as illegitimate.

solved within that time. Since there are an unknown number of cases that never reach the court, it is very likely that 10,000 is still a low estimate. Moreover, Ido also adds that if we considered the last fifty years, on the premise that it is in the 1960s that the phenomenon started, the estimate would around 25,000. Before the 1960s, hospital births were rare and for this reason the 300-day rule was not as problematic, because it was always possible to postdate the child's birth (Ido 2017). This does not mean, however, that the problem did not exist at all before then. Rather, it had different causes. Often children were not registered because they were born out of wedlock. The *mukoseki* issue emerged as a social phenomenon only after 1965, when the number of hospital births exceeded that of home births for the first time, and it is only rarely caused by the deliberate choice of parents to not register a child. If we combine these estimates, we can conclude that the number of *mukoseki* people in Japan is between 10,000 and 25,000.

The legal procedures that are currently available to parents of children born within 300 days after divorce are three, namely, denial of legitimacy (*chakushutsu hinin*), confirmation of absence of parent-child relationship (*oyako kankei fusonzai kakunin*), and forced acknowledgement (*kyōsei ninchi*)[18]. Although before the 2022 reform of the Civil Code only the (ex-)husband could file for denial of legitimacy, it is now possible for mothers and children as well. This procedure is possible within three years after the child was born, of after the (ex-)husband was informed of the child. Confirmation of absence of parent-child relationship, on the other hand, can be filed by the mother, the child, or the biological father, and has no time limit. This second procedure applies when the mother of the child and the (ex-)husband were separated when the child was conceived. When the mother can prove that they were separated with, for example, the registration of different domiciles, then she can opt for this procedure. Both procedures require the presence and cooperation of the (ex-)husband. This can sometimes be problematic, if he is not willing to cooperate and does not show up in court. Another questionable aspect of these two procedures is that the ex-husband's name will be recorded in the personal annotations' column of the child's *koseki*. The procedures will have to be recorded and so the fact that the paternity presumption of the (ex-)husband (with his full name) does not apply to the child, will forever be on the child's register. The third option, forced acknowledgement, can also be filed by the mother of the child, but in this case the husband will not be involved. Instead, the biological father will be 'forced' to acknowledge the child. The first to use this procedure was Ido Masae, when her son was *mukoseki*, and her case set a precedent for cases to come. Now it is done routinely, and it is often preferred by mothers, because it does not require the

[18] More information can be found on the MOJ's website: https://www.moj.go.jp/MINJI/minji04_00034.html and on the Courts in Japan website: https://www.courts.go.jp/saiban/syurui/syurui_kazi/kazi_05_4/index.html

(ex-)husband's involvement and, also, because the name of the (ex-)husband will not be recorder in the child's *koseki*. All three avenues have in common the fact that they require DNA testing which, validated by a court of law, overturns the legitimacy presumption, or proves the biological father's paternity. However, if the mother can prove that the child, born within 300 days after divorce, was conceived after divorce, she will not need to go to court. This became a possibility in 2007, when the Civil Affairs Bureau of the MOJ issued an official notice (*tsūtatsu*) allowing mothers who could provide proof that the child was conceived after divorce with a medical certificate, to present it to the local government office alongside the birth certificate, therefore invalidating the legitimacy presumption without having to go to court[19]. And, since the 2022 reform came into effect, if the mother remarries before the child is born the legitimacy presumption will be applied to her current husband, not her ex-husband, regardless of when the child was conceived. Differently from *mukoseki* children, for *mukoseki* adults whose parents are unknown, the only available procedure is *shūseki.* It is described as «a procedure for creating a family register for a person who has Japanese nationality but does not have a permanent domicile»[20] and it requires that the *mukoseki* person provides proof of Japanese descent for a new *koseki* to be made *ad hoc*.

The process of getting a *koseki* can be years-long and might not be successful in some cases. From 2007 onwards the MOJ and other ministries have issued several official notices (*tsūtatsu*) aimed at helping *mukoseki* people access public services. The most notable example is the 2012 official notice, issued by the Ministry of Internal Affairs and Communications, that allows *mukoseki* people to obtain a residence register (*jūminhyō*). This is only a temporary measure, as this document will have a limited validity, but it allows them to access most public services and, in general, they can do anything that requires an identity document, from voting to buying a phone plan. However, to obtain a residence register one must fulfil several requirements. These conditions are «that the person's descent from a Japanese mother is established, thus that the person's Japanese nationality is clear, that his or her birth notification cannot be submitted due to Article 772 of the Civil Code, and that the person is pursuing litigation or mediation which makes it likely that the person's family register will eventually be created (Odagawa et al 2017:135). This unfortunately makes many *mukoseki* people ineligible for a residence register. Another notable, albeit controversial, example is that of the official notice that allows *mukoseki* people to get a passport (Mainichi 2008). They must have obtained a residence register first, and then they can obtain a passport, but only under the surname of the mother's ex-husband. These official notices have improved the lives of *mukoseki* people in Japan but, as I will

[19] The official notice is available here: https://www.moj.go.jp/MINJI/minji137.html
[20] See the Courts in Japan website: https://www.courts.go.jp/saiban/syurui/syurui_kazi/kazi_05_4/index.html

explain in detail in Chapter 4, they are far from perfect and because these are all extraordinary measures and not laws, local government officials are not always aware of them (Sakurai 2016). This severely hinders the effectiveness of these measures.

5. *Jus koseki*, the *mukoseki* issue, and statelessness

An essential element that makes the *mukoseki* problem different from other forms of misrepresentation created by the *koseki* is their ambiguous status as regards nationality. Although the government has never clearly defined the status of *mukoseki* individuals and has stated in a document that people without a registry (*musekisha*) are Japanese nationals (Akiyama 2018), their reality is very different from that of a Japanese citizen. Even if they meet the *jus sanguinis* requirement of the Nationality Law, they do not have the rights of citizens nor those granted to foreigners. It can be argued that their status is analogous to statelessness (Krogness 2014; Odagawa et al. 2017; Endo 2019). Krogness (2014) argues that, since the *koseki* provides the only proof of Japanese nationality, on the procedural level the Koseki Law interacts with the Nationality Law, with the consequence that the prerequisite for Japanese nationality is not Japanese descent per se, but proof of it in the *koseki*. In other words, since under the Koseki Law (Articles 6 and 7) all Japanese citizens must be registered in a *koseki* and those who are not registered there are considered non-Japanese, it can be argued that *mukoseki* individuals cannot prove that they meet the *jus sanguinis* principle. Krogness (2014) introduces a new concept that better expresses the real functioning of the Japanese Nationality Law, that of *jus koseki*. He argues that, because on a procedural level *koseki* registration is required to be considered officially Japanese, it is *jus koseki*, rather than *jus sanguinis*, the true principle deciding nationality in Japan. Similarly, Endo (2019) also argues that the passport is not the official document proving Japanese nationality, but the *koseki* is. In fact, according to the Passport Law of Japan (Law No. 267 of 1951) it is mandatory to present either a full (*tōhon*) or partial (*shōhon*) copy of the *koseki* when applying for a Japanese passport. Consequently, just like a stateless person, a *mukoseki* person cannot obtain a Japanese passport. Unlike foreign residents, they cannot even be entered in the residence register (*jūminhyō*) without presenting a copy of a *koseki* (see, for example, Article 12, Clause 2, Section 1 of the Regulations for the Implementation of the 'Basic Resident Registration Law', *Jūmin kihon daichō-hō*). On another level, that of the concrete circumstances of the life of *mukoseki* people, it is evident that their status is much more like that of statelessness than that of Japanese citizens or foreign residents, since it is impossible for them to do any which requires an identity document. Unregistered children are *de facto* stateless, but de jure Japanese citizens, virtually suspended between the two. Technically, it is as if they are forever stuck in that bureaucratic limbo between their birth and their registration.

6. The 2007 failed reform

After the newspaper Mainichi started its awareness campaign and the 300-day problem was brought to the Diet's attention for the first time in 2006, on 7 February 2007 Edano Yukio (Democratic Party) raised the issue once more at the Committee on Budgets (*yosan iinkai*) and asked the then Justice Minister Nagase Jin'en to take immediate action. Although stressing the importance of legitimacy presumption, Nagase acknowledged that medicine had advanced, and people's ideas (*ishiki*) had changed since the promulgation of the Civil Code in 1898 and said he would take into consideration. The following week, a group of like-minded members of both Houses inaugurated a multi-party roundtable (*benkyōkai*) on the *mukoseki* problem, led by NGO M-net president and *koseki* activist Sakamoto Yoko. A total of thirty-seven representatives and councillors of all the main parties entered the group. During the first meeting, the group listened to the testimonies of parents of *mukoseki* children and decided to work on a reform proposal, with the intention of proposing it as a private members' bill (*giin rippō*)[21] (Mainichi Shinbun 2008). Things were set in motion. Two weeks later, Maruya Kaori and Oguchi Yoshinori of the Komeito created a project team to tackle what they called the 'Article 772 problem'. The team also listened to families of *mukoseki* children and civil society organizations and came up with a proposal. The authors were members of the ruling coalition Oguchi Yoshinori (Komeito) and Hayakawa Chuko (LDP), and this is known as the 'Hayakawa-Oguchi draft'. They proposed not to reform the Civil Code nor court procedures regarding legitimacy contestation, but to introduce a new law regulating the submission of birth certificates. This law would allow mothers of children born within 300 days after divorce to overturn the legitimacy presumption by providing a medical certificate attesting that the conception happened post-divorce. It would also allow mothers who remarried to overturn the presumption with a similar certificate, attesting that the child was born during the second marriage. The child would then be considered the legitimate child of the current husband. Although in this case they added two preconditions: that the ex-husband did not object, and that a DNA test confirmed paternity of the current husband. They also urged a reform of Article 733 of the Civil Code, which imposed a remarriage waiting period (*saikon kinshi kikan*) of six months for divorced women, to reduce said period to 100 days, as had already been discussed at a previous Legislative Council in 1996 but had yet to be done[22]. The aim was to allow women to

[21] This kind of law is enacted on the initiative of members belonging to the legislative branch. In Japan, the Cabinet does not have veto power over laws enacted by the Diet, so even if they go against the policies of the Cabinet, they are immediately enacted as laws. Bills that are enacted as legislative bills are often those in which legislators are morally compelled to solve a problem, or are based on new values, which makes it difficult for the government to take the initiative. However, if the ruling party decides to reject the bill, it will be scrapped during deliberations and it will not be enacted. However, he had great influence in the party.

[22] It had been proposed as part of a reform that would allow married couples to keep their surnames (*fūfubessei*). The reduction to 100 days of the remarriage waiting period reached a consensus, but the reform proposal was rejected.

remarry sooner than they previously could, to reduce the number of *mukoseki* cases. The day after the presentation of this proposal, to act alongside the Komeito, the LDP also launched its own project team, led by Hayakawa, which also approved the proposal. Things were moving fast, and both Oguchi and Hayakawa were confident that the private members' bill would be welcomed by the leaders of the LDP. However, none of the more conservative party members had yet voiced their opinions. The next step was to present the draft to the Judicial Affairs Committee (*hōmubukai*) of the LDP, and then submit it to the party's General Council (*sōmukai*). Although the director of the Judicial Affairs Committee, Yoshino Masayoshi, told journalists that he was in favour of the proposal (Mainichi Shinbun 2008:86-88), it was during the meeting of the Committee that the first arguments for a more conservative approach emerged. Furuya Keiji argued that the timing of the reform was too hasty and that it required more discussion. But he was the only member to voice this opinion and the Committee ultimately approved the draft. However, at this point the more conservative members of the party, including Justice Minister Nagase, increasingly started creating friction to put a stop to the proposal. It became clear that there was a divide within the LDP between the more conservative and powerful, and the more progressive members. On 3 April, after one more meeting of the project team, Nakagawa Shoichi, the Director of the Policy Research Division of the LDP, told journalists that he was unhappy with the draft because of the inclusion of the reform of Article 733 (Mainichi Shinbun 2008:92-94). He argued that reducing the remarriage waiting period for women had nothing to do with the *mukoseki* problem and that the focus should be on children, not on women. On 9 April 2007, the authors of the draft met with the Justice Minister Nagase, who voiced his opposition and, according to Hayakawa, commented that «we don't want [this law] to be misused in a way that violates a certain social order» and «it would be better to follow the court procedures under the current legal system» (Mainichi Shinbun 2008:96-97). By 'misuse' of the law, he referred to the possibility that women who conceived a child with another man, while married, could easily evade the legitimacy presumption, and avoid incurring in the 300-day problem. His concern was, in other words, that there would be no law deterring women from having extra-marital affairs. But Nagase did not have the authority to stop a private members' bill. As Ido (2018:245) explains, Justice Ministers do not speak at project team or subcommittee meetings of the political party to which they belong. The role of party committees is to make proposals to the Cabinet. The elected minister receives and considers the proposals of the committees and, therefore, it would be odd if it was a proposal that he himself had made or that had been informed by his opinions. Ido (2018:245) adds that Nagase, who was notoriously against Family Law reformation, got five younger members of the Diet to create another, independent, group, and had them oppose the draft at the project team meetings. On 10 April, these five members sent by Nagase participated in the project team meeting and turned the tables around. Inada Tomomi argued

that adultery is illegal and, therefore, only through court can exceptions to the legitimacy presumption be made (Mainichi Shinbun 2008:97), and Nishikawa Kyoko added that allowing the use of DNA testing would be like the 'ant hole' (*ari no ana*) that makes the whole institution of marriage, and the family system, fall apart (Mainichi Shinbun 2008:98). Their voices had a particularly great impact on the decision-making process because at that time the members of the project team who were in favour of the draft thought it a done deal and did not show up (Ido 2018:246). Just like that, on 25 April the draft was submitted to the policy research director of LDP and Komeito, who agreed not to submit it to the Cabinet. Conservative leaders of the LDP declared that if members of the party arbitrarily decided to bring the proposal further, they would stop them (Mainichi Shinbun 2008:99). Although technically Oguchi and Hayakawa could have gone on with their private members' bill (*giin rippō*), they would have met the opposition of their most powerful party members and would have probably self-sabotaged their political career. Just a few days before the 9 April meeting, Nagase had announced that he would have an official notice (*tsūtatsu*) issued by the Civil Affairs division of the MOJ, to allow children conceived after divorce, who would have otherwise become *mukoseki*, to be registered. This gave him the opportunity to avoid altering the law or issuing a new law, and not lose face. Nagase orchestrated everything, he even wrote the Head of Civil Affairs official notice, instead of the then Head of Civil Affairs, Terata Ichiro (Ido 2018:256-257). To explain his decision, Nagase later said that «if we help women who become pregnant before their divorce is finalized, it will have a great impact on the way parents and children and families should be. We must consider issues such as the duty of [marital] faithfulness and sexual morality» (Mainichi Shinbun 2008:100). Although the draft failed and was not submitted to the Diet, this process is very interesting to observe and to compare the more recent 2022 reform that passed. In Chapter 4 I will illustrate that the fundamental arguments of those who oppose change remained the same and, that the LDP, which is also the author of the 2022 reform, still had a leading role in the reform process. The LDP Justice Minister, in both 2007 and 2022 reforms, had a very influential role in determining whether the reform would be drafted and how it would be drafted.

7. Representation of the *mukoseki* problem in the media

To analyse how the *mukoseki* problem is understood and thought of by *koseki*-registered Japanese, I have looked at different media – newspapers, television, film, theatre, manga, literature – and how they portray the *mukoseki* problem and *mukoseki* people. I also included an analysis of how the MOJ, that administers the *koseki*, describes the problem, the possible solutions, and resources available to unregistered people on its website. And finally I examined Twitter posts on the issue. I found some common elements in the way in which these representations portray *mukoseki* people, and in

particular the mothers of *mukoseki* children and the *mukoseki* problem itself. This allowed me to draw some conclusions about how this issue is perceived by the majority-Japanese who have not experienced it, and how it is part of the public debate. I compared this type of representation to the perspective of activist Ido Masae (2017, 2018) on her account of her experience as a mother of a *mukoseki* child and as advocate for the unregistered. A complete review of media representation is beyond the scope of this research, but this analysis will constitute an important and necessary addition that will further contextualize the voices of my interlocutors (see Chapter 4).

7.1 The *mukoseki* problem on screen, on stage, and on the page

Before the *mukoseki* problem became widely known in 2007, thanks to an NHK documentary, there was little mention of it in Japanese media. Given that the nature of this phenomenon changed greatly along with socio-historical developments and changes of the *koseki* system, in this paragraph I will focus on representations of the *mukoseki* problem elaborated after 2007, except for one film that came out in 2004. But I will include some notable examples that predate the documentary and that show the *mukoseki* problem in a different light. That is likely because until the 1960s most women gave birth at home and were able to postdate their children's birth certificates if needed and, therefore, the 300-day problem was not an issue as it is today. However, children would often become *mukoseki*, at least temporarily, if they were born out of wedlock. This was the case for Kaneko Fumiko (1903-1926), an anarchist activist who, with partner Pak Yol, formed a nihilist group advocating for direct action against the government and was, because of this, under government scrutiny. The destruction caused by the Great Kanto earthquake of 1923 created great civil unrest and public anxiety, and the suspicion that Koreans seeking independence would use the confusion to start a rebellion exacerbated hatred against Koreans, resulting in what is now known as the Kanto massacre. The Japanese military took advantage of the chaos to suppress communists and labour union organizers. Among them, Kaneko and Pak were unjustly accused of plotting the assassination of the Imperial family and convicted of high treason. While she was in prison, between 1923 and 1926, Kaneko wrote her autobiography, *The Prison Memoirs of a Japanese Woman*, where she recalled her childhood as a *mukoseki* child. When she was born her parents were not married and this made her an illegitimate child. To avoid besmirching the family *koseki* and social stigma, she was not registered. She was *mukoseki* until 1912, when she was sent to her grandmother in Korea, where she was finally registered as her grandmothers' daughter, therefore as her mother's sister. This was often the case for children born out of wedlock. Nevertheless, she was always treated cruelly by her grandmother and always reminded that she was unwanted. When she was enrolled in school she was allowed to attend only as an auditor since she did not have a *koseki*. This was a particularly painful experience for her, who

loved learning and wanted to pursue higher education. Another example is *The hunchback of Aomori*, a play written by Terayama Shuji in 1967 about Matsukichi, a man who is looking for his mother. He thinks he has found her when he meets Matsu, the only remaining member of the powerful Taisho family, because her story seems to confirm it. She was the maid of the son of the Taisho family, who raped her. She got pregnant and the family, to hide the scandal, forced the two to marry. But the child was born with a hump on his back and the parents-in-law ordered the mother to abandon him and leave him to die. Reluctantly, she had a servant abandon the baby in the mountains, but the servant could not bring himself to do it. Thirty years later, Matsukichi, who has a hump on his back and grew up in the mountains, finds Matsu and thinks he finally knows who he is, although in the end Matsu confesses that thirty years earlier, she killed the baby herself, disgusted by his deformity. In the play, Matsukichi is never labelled *mukoseki* but the mere fact that he does not know the identity of his mother confirms that he is. Lastly, in the play *Thread hell* by Kishida Rio, first performed in 1984 and set in 1939, the protagonist is Mayu, a young woman who has lost her memory and is looking for her mother. She is lured by a recruiter to work in a silk mill that doubles as a brothel at night. All the women who work at the mill are *mukoseki* and their employer has invented life stories for them to amuse their clients. The women start telling their stories, compelled by the arrival of the newcomer. Among them, Mayu finds her mother, whom she recognizes by her scent. She confronts her and accuses her of selfish betrayal «with her choice to be a woman rather than a mother» (Tonooka 2001:157) because the mother supposedly tried to seduce Mayu's boyfriend. These three early examples portray the *mukoseki* problem in a different historical context, where children were not registered mainly because they were illegitimate. Although single motherhood is still stigmatized in contemporary Japan, both the increased accessibility of abortion procedures and the widely spread practice of 'shotgun weddings' prevent the illegitimacy of children. Today's scenario is very different and most *mukoseki* cases are caused by a discrepancy between the biological and the legal father, and this is reflected by media portrayals of the *mukoseki* phenomenon.

The films, novels, manga and plays that I have considered hereon are all written or directed by *koseki*-registered Japanese. They are not the product of a *mukoseki* author or of someone who is related to a *mukoseki* person. In fact, there are very few accounts of the *mukoseki* problem by people directly affected by it. To my knowledge there are only two such authors. One is Kaneko Fumiko and the other is Ido Masae who, much later, wrote about her experience as a mother of a *mukoseki* child in *Nihon no mukosekisha* (2018). I will analyse how they portray the *mukoseki* problem in a following paragraph, while here I will analyse the external point of view of other Japanese authors. As for entertainment, there are not many products that include *mukoseki* characters or that include the

mukoseki problem as a theme. I was able to find three films that fall into this category. *Dare mo shiranai* (2004), by the internationally renowned director Kore'eda Hirokazu, tells the story of four children abandoned by their mother in an apartment which they were not allowed to leave. For some time, they manage to survive with the money that she left them and the money that the oldest brother manages to get from his father and the other siblings' fathers. But eventually their utilities are cut off and they are forced to go outside to wash and look for food. The story ends on a tragic note when the youngest sister falls off a chair while playing and dies. The film is based on the true story of five siblings who were abandoned by their mother in their apartment in Sugamo, Tokyo, in 1988. Although there is no explicit mention of this in the film, some of the children were never registered in the mother's *koseki*. In the film this is implied, however, because it is likely the reason why the mother hid them from the landlord and why they were not allowed to go to school or even out of the house. The more recent film *Taro no baka* (2019), directed by Omori Tatsushi, follows the protagonist, a nameless boy who everyone calls Taro. He is *mukoseki* and is left to fend for himself in a world of marginalized violent teenagers by a mother who appears unwilling to take care of him or even acknowledge his existence. And in *Sora no nai sekai kara* (2022), by Ozawa Kazuyoshi, the main character is the mother of a *mukoseki* girl who is hiding from her abusive husband, who is the father of the child. Too traumatized and scared of what he could do if he found them, she does not register her daughter and forbids her to leave the motel they live in. When the daughter becomes six years old and starts asking to go to school and, coincidentally, the owner of the motel decides to close it, the protagonist is forced to face her fears and the outside world. Of the three films, *Dare mo shiranai* is the most famous both in Japan and abroad, where it is known as *Nobody knows*.

As for television, there is one TV series in which the *mukoseki* problem is a central theme. *Iki mo dekinai natsu* was aired by the national broadcaster NHK in 2012, starring famous actress Takei Emi who portrayed Rei, a teenage girl who finds out she is *mukoseki* for the first time when she is offered a permanent position as a pâtissier. When she goes home to collect the necessary documents, she does not find any. Rei then finds out that her mother, before marrying the man that she knew as her father, was previously married to an abusive man. Rei was born within 300 days after her mother's divorce and was never registered. In the end it turns out that the mother's ex-husband, who raped her when she went to ask him to sign the divorce notification, is really Rei's biological father. There is also a manga series that focuses on the *mukoseki* problem, *Bosei no shitsuraku: Mukoseki jidō no kieyuku koe* (2017), where the protagonist finds a little girl who is abused by her mother, who never registered her, and ends up helping her.

There are also two plays, *Kawabe Ichiko no tame ni* (2015) and *Kawabe Tsukiko no tame ni* (2018), both by Toda Akihiro. In the first play the protagonist is a *mukoseki* girl who disappears the day after her boyfriend proposes to her. The narrative is fragmented and mysterious, just as Ichiko is a mystery to everyone who knew her. The characters are interrogated by a detective who suspects Ichiko of killing her paralyzed sister. Through their testimonies and some flashbacks, who find out that Ichiko's mother made her assume her sister's identity so that she could attend school and not suffer the consequences of being *mukoseki*. Her sister, Tsukiko, had muscular dystrophy and was bedridden, so they were able to hide her existence apart from the social worker, who was also the mother's lover, who did welfare checks on Tsukiko. Ichiko finally recalls Tsukiko's death and admits to removing her respirator on purpose. In the second play the protagonist is Tsukiko, Ichiko's real sister, who does not have muscular dystrophy and has been swapped with the homonymous and bedridden Tsukiko that we saw in the first play. In a complicated game of pretend, Tsukiko impersonates Ichiko and pretends to be *mukoseki*, to get a *koseki* for the older sister. The two plays were well received and the first one has been adapted into a film that is scheduled to premiere in December 2023.

As for literary fiction, several novels centred on the *mukoseki* problem have been published in recent years. In my analysis I have included the three novels where this theme was the most central. *Anata no tonari ni iru kodoku* (2020), by Higuchi Yusuke, tells the story of Rena, a *mukoseki* 14-year-old girl who lives with her mother, Makiko. The two of them never settled down, always moving from town to town, so that 'the man' would not find them. For the same reason, Rena's mother never registered her, and Rena has never gone to school. Rena studies hard by herself and wears a second-hand school uniform for her part-time job in a JK café[23]. Makiko allows her to work a part-time job so that she can learn to socialize, something that she could not do at school. One day Rena receives a call by her mother, telling her they have been found by 'the man'. That day her mother disappears, and Rena is left alone. She later finds out that Makiko's real name is Reiko, and she is not her real mother. She is a relative of Rena's real parents who was desperate to have a child but could not, and so she kidnapped her when she was only two. So Rena finds out that she was not really *mukoseki*, she was only told by the woman who raised her that she was. In *Towa no niwa* (2020), by Ogawa Ito, the protagonist is a blind girl named Towa who lives with her mother in a house she is not allowed to leave. When one day Towa is abandoned by her mother, who does not back home from work, she is left all alone and unable to take care of herself, until she is found years later. That is when she finds out that her mother never registered her, and she is *mukoseki*. She recovers from malnutrition and

[23] The acronym JK stands for *joshi kōsei*, high school girls, and a JK café is a commercial activity that allows costumers the engage in a date-like interaction with high school girls. They could be high school girls or not, but nevertheless their child-like image is maintained through their young appearance and school uniform.

slowly starts engaging with the outside world, and she is finally registered in an individual *koseki* when her mother turns herself in to the police and confesses to the murder of Towa's two older brothers, to abandoning Towa, whom she never registered, and to also blinding her daughter when she was a baby. *Torikago* (2021), by Tsujido Yume, is a mystery novel about Rihoko, a detective who finds a mysterious community of *mukoseki* people hidden in a factory's warehouse, while she is investigating a girl, Hana, for attempted murder. As events unfold, Rihoko finds out that Hana and her brother Ryo, the leader of the community, were abandoned in a box when they were little and found by the older *mukoseki* who live in the warehouse. Around the same time a boy and a girl of the same age were kidnapped from a children's home. The children who disappeared were known as the *torikago jiken* (the birdcage incident) children, who were abused by their mother and kept locked in a room with birds, fed seeds and left without any human interaction. The detective thinks Hana and Ryo might be the birdcage children and tries to confirm their identity. She then finds out that they are not the same children, but that the four children are connected. Hana and Ryo's mother abandoned them in front of the Kanouchi factory because the owner had published an advert in the newspaper saying that he would give shelter to any *mukoseki* people who turned to him. She was also the one to kidnap the 'birdcage children', with the help of her lover and accomplice. Their aim was to pretend they were the woman's children and kill them, but making it look like an accident. That way they were able to collect the life insurance money for the two children and live off that. So in the end we find out that Hana and Ryo were not originally *mukoseki*. They originally had a *koseki,* but they were declared dead.

In the three films, one television series, one manga, two plays and three novels that I considered in this paragraph, there are some recurrent elements in the way they represent the *mukoseki* problem and especially the mothers of *mukoseki* children. In most of them the mothers are controversial characters. They are often abusive and their choice to not register their children is part of the abuse. Or they are portrayed as not brave enough to take the situation into their hands and solve their children's *mukoseki* status. They are often promiscuous and/or work jobs that are stigmatized as inappropriate for a mother such as a hostess or a sex worker. For example, in Kore'eda Hirokazu's film *Dare mo shiranai* the mother, although sometimes affectionate, is portrayed as an unmarried, promiscuous woman, who abandons her children to be with her new boyfriend who does not even know about them. She chose not to register them likely because of the social stigma surrounding single motherhood and promiscuity. Although this is a true story, the type of case the film portrays is one where the mother decided not to register her children to avoid social stigma, and that represents only a small minority of *mukoseki* cases. The film's success, combined with the general ignorance regarding the *mukoseki*

problem, might give the impression that all mothers of *mukoseki* children are abusive, or at least inadequate caregivers. While the mother's abuse in Kore'eda's film might seem unintentional, although deplorable, in the film *Taro no baka* and the manga *Bosei no shitsuraku* the mothers are represented as physically violent and resentful towards their children. In these two portrayals the abuse is much more blatant, as is for the novel *Towa no niwa* where the mother blinds her daughter, regularly hits her, and finally abandons her. The woman that raised Rena, in the novel *Anata no tonari ni iru kodoku*, kidnapped her because she wanted a daughter. And although she raised her lovingly and the two had a good relationship, she made her live as *mukoseki* although she was not. In the TV drama *Iki mo dekinai natsu* (2012) the characters are more nuanced and the reason why Rei, the protagonist, is *mukoseki* is, more realistically, Article 772. Nevertheless, Rei's mother is portrayed as too traumatized by the ex-husband's abuse to do what is best for her daughter. And when she disappears and goes into hiding, because she has seen her ex walk around her neighbourhood and was too scared to go back home, in doing so she refuses to help Rei with the necessary paperwork. Even if the protagonist's mother did not arbitrarily decide to make her daughter *mukoseki*, but she found herself unable to do so, still she is represented as somewhat guilty. Although she tells her daughter she wants to help, she fails to do so several times, and the protagonist blames her for this. Similarly, in the film *Sora no nai sekai kara* the mother is too scared that if she registered her daughter, her abusive husband would find them. But her decision to never allow her daughter to leave the motel where they live seems irrational and her daughter longs for interaction with other children. The mother blames herself for being too weak and not doing what is best for her daughter and the various characters that she meets slowly give her the confidence to do so. This film and the TV series have in common the fact that both *mukoseki* girls are the ex-husband's daughters. In *Sora no nai sekai kara* it is never explicitly said, but in the first scene the protagonist is shown running away from her husband visibly pregnant, which suggests that she was with him up until that point. So when the mother finally decides to register the child, it is presumably in the husband's *koseki*. And in *Iki mo dekinai natsu* it is revealed towards the end that Rei is the biological daughter of the ex-husband, who raped her mother when she begged him to sign the divorce papers. She was conceived the same day that a divorce notification was submitted and, therefore, in her case the legitimacy presumption is correct. So Rei is first registered as his daughter, in his *koseki* and with his surname, and is then transferred into her mother's *koseki*. Both scenarios cannot be representative of most *mukoseki* cases where domestic violence is involved, where the children are usually the son or daughter of the new partner of the mother.

Rena's mother in *Anata no tonari ni iru kodoku* works as a hostess in a club, and Ichiko's mother in *Kawabe Ichiko no tame ni* works in a snack bar. Both types of establishments cater to men and are characterized by the presence of young attractive women who entertain the customers in a flirtatious way. These jobs do not require sexual interactions with customers, but they do require a night schedule, regular heavy drinking and, of course, flirting with men, and are used to characterize these fictional mothers as questionable parents. In *Towa no niwa* the mother resorts to prostitution when the money that they receive from a mysterious Otto-san are no longer enough to sustain them and, again, the author likely added this element to paint an even more unsettling picture of a monstruous mother. Another recurring element is the positive role that local governments and the police have in some of these stories, which is somewhat unrealistic. For example, in *Iki mo dekinai natsu*, the *koseki* official that Rei meets at her local government goes out of his way to help her, working after hours and even getting involved in the girl's personal life, becoming a father figure to her. In *Torikago* the protagonist neglects her own family to help the community of *mukoseki* that she met, spending most of her days and nights researching ways for them to get a *koseki*. Although the book realistically shows how local governments often send *mukoseki* people away without any answers, her character is hardly realistic. In *Towa no niwa*, Towa is given an individual *koseki* by the head of the local government as soon as they find her mother and she confesses to her crimes. Because of her being abusive they decide not to register Towa in the mother's *koseki* and create an individual one for her, as they would do for a foundling. Again, the institutions are portrayed as the ones providing the protagonist with a *koseki*, while her mother is the one who hid her existence from the world. Furthermore, it is hardly believable that they would create an individual *koseki* for someone whose parent is known and alive because it contradicts the whole *koseki* system. Lastly, it is important to note that the fathers of *mukoseki* children are never present in these representations. They are almost never in the picture either because their identity is unknown or because they are dead. Only in *Nobody knows* and in *Iki mo dekinai natsu* we see a (biological) father figure. In the former we see the older brother go to the fathers of his siblings to ask for money after the mother disappears, but none of them are willing to help them or step in even though they know they are left to fend for themselves. And in the latter, the ex-husband's who turns out to be Rei's biological father goes looking for her and meets her as his last wish before he dies of cancer. So in most of the representations that I considered, the mothers are portrayed as the only caregivers of the *mukoseki* children, but also as either abusive or neglectful parents. And they are always the ones to blame for their children's *mukoseki* status. In other words, they are not victims but perpetrators.

7.2 The institutional representation of the *mukoseki* problem

The MOJ has recently created an entire section of its website dedicated to people struggling with the *mukoseki* problem. It includes a frequently-asked-questions page about what to do in different circumstances and a series of videos including ones that explain the different legal procedures that are available, and ones that show, in a *dorama*-like fashion, fictional cases and their solution. There is also a page where they give ten real examples of problems than can arise during the various procedures, and how they were solved. Nevertheless, all sections offer rather superficial information and mostly encourage readers to consult with either the local Legal Affairs Bureau or a lawyer. In this paragraph I will analyse the way that the *mukoseki* problem is defined by these webpages and videos, the language used to explain its causes, and the way the legitimacy presumption system is presented as good and desirable. These elements show the MOJ's intention to present the *koseki* system and the legislation as flawless and to shift the responsibility onto the individual.

The slideshow on the main webpage, as well as the downloadable leaflets and the videos, all have in common the fact that they portray the *mukoseki* problem as easily solvable. They explain the process of getting a *koseki* in a few seemingly easy steps and, although they mention that in many cases a lawsuit is necessary, they do not give the reader, or the viewer, an accurate idea of the difficulty these steps entail. They make it sound much easier than it is. To give an example, in the introductory video they say, in a reassuring way, that although a lawsuit is often needed, most people manage to get a *koseki* through legal action. The very first step, for example, is to go to the local government office, or find the nearest Legal Affairs Bureau, and ask for help. And this is what usually people tend to do. But the reality is that due to the rotation of local government employees and the *mukoseki* problem being quite rare, the staff does not always know how to help them. They might not even know that there are procedures available at all, and this is a great obstacle for *mukoseki* people and parents. The second step is to seek a consultation with a lawyer and, in this regard, one thing that is mentioned repeatedly is the financial aid offered by the Japan Legal Support Center (*hōterasu*). It is presented as an easy solution for those who cannot afford legal assistance, but it is also conveniently left out that the advance that *hōterasu* pays must be given back eventually and, depending on the financial situation of the individual seeking assistance, this might be a deterrent as legal fees may be very high. They also do not mention that such loans are limited to lawsuits and do not cover other types of legal action, such as a mediation. However, *hōterasu* is presented as a blanket solution for all financial problems related to the *mukoseki* cases, and in all the *dorama*-style videos mothers of *mukoseki* children are always portrayed as relieved to know about it and grateful for their service. And the

hōterasu lawyers are portrayed as knowledgeable of the *mukoseki* problem, which is rarely the case, and sort of the 'saviours' thanks to whom everything will be resolved.

Another example is the way they gloss over the issue of privacy for domestic violence survivors. They mention that women who are concerned for their safety at the prospect of meeting the ex-husband in person, or them knowing their current address, 'measures' are taken on a case-by-case basis. They do not explain what these measures are, and they do not add what the criteria are for that decision. However, it is very likely that these would include some sort of proof of the abuse which it is not always possible to provide. And even if there is the possibility to request to attend the hearing remotely, both parties must agree to it, so a veto from the ex-husband would make it impossible for the woman to be protected (see Chapter 4). So, again, they make it sound easy and fail to mention the complexity underneath every reassuring statement. Even when they explain the causes and nature of the *mukoseki* problem they tend to be vague about negative consequences of living without registration. For example, in one video entitled *Koseki wo tsukuru tame no nagare (2)*[24] they say that not having a *koseki* «*may* cause difficulties in some cases». This relates to what they say in another video, part 4 of the same series,[25] where it is explained that *mukoseki* individuals can access public services. However, they fail to mention the underlying complexity of this statement, because although it is true that *mukoseki* children can, for example, go to school, before they can do that families need to contact the school's principal, explain the situation and hope that the child will be allowed to enrol. And every school might give a different answer. And as for healthcare, *mukoseki* people can enrol in the national health insurance only if they obtain a residence register (*jūminhyō*) first. And, as we have seen earlier in this chapter, to obtain that they must satisfy certain conditions and the residence register that they are given is only temporary.

As for how they define the *mukoseki* problem and the legitimacy presumption that causes it, the wording that they chose seems to shift all responsibility to the parents and to justify the need for a legitimacy presumption system. In the previously mentioned video, *Koseki wo tsukuru tame no nagare (2)*, they explain that the *mukoseki* problem «arises because, for various reasons, a birth certificate is not submitted». They use the passive form of the verb *dasu*, submit, which does not require a subject but clearly refers to the parents, who have a duty to register children. They go on to explain Article 772 as a system that seeks to promote the wellbeing of the child by establishing the legal parent-child relationship at an early stage. It does not say this anywhere in the law, so this is merely an interpretation of its *raison d'être*, and it is one that allows the MOJ to overlook the law's

[24] Video accessible here: https://youtu.be/O5yQF9K0s8U [Accessed on September 27, 2022].
[25] Video accessible here: https://youtu.be/MAWjl1c5-VY [Accessed on September 27, 2022].

flaws. There are also other instances, here and there, where the videos remind the viewer that the *mukoseki* problem and its solution are the parents' responsibility, and especially the mothers'. For example, in part 3[26] of the *Koseki wo tsukuru tame no nagare* series they give a fictional example of a mother who had a daughter within 300 days from the divorce, and comment that they were able to register her daughter as soon as she was born because the mother started working towards it in the early stages of pregnancy. So the child did not have to become *mukoseki* at all. This seems to imply that when that is not the case, it is because the mother did not put in the work soon enough. The same video carries on the explanation by listing the various procedures that are available. It starts by saying that the first way that parents struggling with the 300-day problem can give a *koseki* to their child is by registering them in the ex-husband's *koseki*. Needless to say, if parents were willing to do that, the 300-day problem would not exist. However, this is the very first thing that they mention. Then, they add, if you start a lawsuit to prove that the child is not the ex-husband's, and you are successful, you can 'correct' that information. Again, they conveniently leave out that the information might be changed, but any data entered on a *koseki* is permanent and will never be deleted. There are also three videos, each dedicated to three of the procedures available, and the one that explains the *shūseki* procedure is particularly interesting. *Shūseki* is the procedure available to adult *mukoseki* individuals that initiate legal action themselves, to obtain a *koseki*. Its success depends on their ability to prove they have Japanese descent, and therefore, Japanese nationality. What is interesting about this video, which is also shot with actors portraying a fictional *mukoseki* case, is that the story is completely unrealistic. The protagonist is a man in his thirties who just found out that he is *mukoseki* when, because of a career change, he needs to go to the local government office to enrol in the national health insurance that can no longer be provided by his employer. Once there, he is told he does not have a *koseki*. The video later explains this by saying that he grew up with his grandparents and never knew his parents. He then seeks a consultation with a *hōterasu* lawyer and is told that for *shūseki* he needs to present documents that prove his relationship to his parents. They then show him after the whole process, after a successful *shūseki*, finally able to go back to a white-collar job. The only realistic part of the video is the one regarding the type of documents that are necessary for *shūseki*. But the fact that the protagonist was an adult *mukoseki* who did not know that he was and was able to work regularly without ever being asked to submit a copy of his *koseki* or his residence register, is utterly unrealistic. I discussed this video with activist Ido Masae and asked her if she thought that such a case could exist, and she agreed that no Japanese person could be able to work a regular job without providing a form of identification and so it is unimaginable that one would only find out after

[26] Video accessible here: https://youtu.be/VyHTptq46H8 [Accessed on September 27, 2022].

a career change that they are *mukoseki*. The fact that the MOJ commissioned these videos and likely had an employee select some 'typical' cases to be portrayed strikes as alarming. It is concerning that they would have so little knowledge of the *mukoseki* phenomenon to believe such a case to be realistic. It seems to suggest that they have no idea of the problems that a *mukoseki* adult faces. It is even more concerning if one considers that they are not only spreading misinformation, or portraying the *mukoseki* problem incorrectly, but that they are responsible for the policies that could help *mukoseki* people. Overall, in all the contents included in the MOJ's website, and especially in the videos, the underlying assumption is that most *mukoseki* cases could be easily solved if only the parents, of the *mukoseki* people themselves, had the right information. In all the videos portraying fictional, but supposedly typical, cases, the families are shown to be struggling until they finally seek the help of their local government, or a *hōterasu* lawyer. After that, they finally have all the information they needed, they can have the financial support of *hōterasu*, and all is well. But this is far from the truth. Local governments are not always helpful, *hōterasu* is a useful resource only to those who can afford to repay the legal costs later on and, it must be added, most people and especially most mothers who seek legal help are already knowledgeable about the procedures available. In other words, the problem is not their ignorance of the legal procedures, it is the fact that these legal procedures are not as easy and straightforward as the MOJ makes them sound like, as will be discussed in Chapter 4.

7.3 The *mukoseki* in the press

Following a 2007 documentary by the Japan Broadcasting Corporation, NHK, that made the *mukoseki* problem widely known for the first time, *mukoseki*-related news frequently appears on national newspapers. Notably, the Mainichi Shinbun covered the issue extensively and launched an awareness campaign that year. The articles mainly covered the attempted reform of 2007 and the subsequent official notices issued by the Civil Affairs Bureau of the MOJ (*minji kyokuchō tsūtatsu*). The newspaper later collected many of the articles and published a book (Mainichi Shinbun 2008). To understand how national newspapers represent the *mukoseki* problem I have taken into consideration thirty articles published between 2014 and 2023. Most of them were published in the digital edition of the newspapers but a small number were the digitized edition of printed articles. They were mostly selected among the major national newspapers, namely, Asahi Shinbun, Mainichi Shinbun, Yomiuri Shinbun, and Nihon Keizai Shinbun. Following on the trend that started in 2007, the Mainichi Shinbun is still the newspaper that writes more on the issue with around 200 articles on their website, followed by the Asahi, with around 100. The Yomiuri and the Nihon Keizai published much fewer articles, the former with only 23 and the latter with 60 on their websites. For all newspapers, a rise in the number of articles can be noticed coincidentally with several events. Most recently, many articles

have been documenting the 2023 reform process, which started being discussed in the Diet in 2019. Just a few months before the first reform draft was published, in September 2020, the death of an elderly woman in Osaka made the news for its controversial circumstances. The news was particularly shocking because the woman died of starvation and the reason why neither her or her son asked for help was that they were both *mukoseki* and they believed no one would help them. Another incident, that of a woman who died after being hit by a car in 2018 was covered by several newspapers. Her daughter found out that her mother was *mukoseki* only when she tried to claim her body and could not, because she could not provide any proof of relationship to her. During the initial stage of the Covid-19 pandemic many articles were published about the 100,000-yen handout, which was part of the government's emergency economic measures, and whether *mukoseki* people could claim it even without identification. And finally, articles grew in number whenever a book about the *mukoseki* problem, either fiction or non-fiction, came out. Apart from these articles, most of them simply described the phenomenon and its causes. Interestingly, the ways that the various newspapers write about the *mukoseki* issue and what they write are quite similar, even though their political tendencies vary. According to a 2009 survey by the Japan Press Research Institute[27] the Yomiuri Shinbun was found to be the most conservative with 5.6 points, on a scale from 0 to 10 with 10 being the most conservative and 0 being the most progressive. It was followed by the Nihon Keizai Shinbun with 5.2 points and the Mainichi Shinbun with 5.0 points. The Asahi Shinbun was considered the most progressive with 4.4 points.

The recurring elements that I found are as follows. All articles spend at least one paragraph explaining what the *mukoseki* problem is and what causes it. This applies to all articles published between 2014 and 2023 that I examined. It would seem to indicate that to this day the phenomenon is still widely unknown by the *koseki*-registered population. And the fact that there are still many articles where the main news is the *mukoseki* problem itself and not a specific case or an event that is relevant to it, supports this argument. Even if it is 'old news', it is still written about as if it was a recent discovery. Another element that is always explained, other than the causes of *mukoseki* cases, is what being *mukoseki* entails. This, however, varies from article to article. The negative consequences of being unregistered that the author choses to focus on vary greatly, with some of them listing merely one or two things, and others going more into depth. Nevertheless, most are extremely vague in defining the obstacles that these people face to the point of being completely inaccurate.

[27] The survey's report can be accessed here https://www.chosakai.gr.jp/project/notification/.

> People who do not have a *koseki* are generally unable to register as residents (*jūmin*) or obtain a passport, take time to receive marriage registration, and may be at a disadvantage when it comes to finding employment. (Yomiuri, May 2021)

> Being *mukoseki* causes problems in one's daily life. There have been cases where it becomes difficult to obtain a driver's license, qualifications, a passport, and to find employment. (Nihon Keizai, December 2022)

> They suffer from various disadvantages in their daily lives, such as not being able to obtain a passport or driver's license. (Yomiuri, May 2023)

On the one hand, downplaying the consequences of being *mukoseki* might have positive consequences, because it makes it known that there are ways for *mukoseki* people to access education and healthcare, and even to obtain residence registration or a passport, while many people simply assume that it is impossible. But, on the other, it does not consider that all the above is only possible if the *mukoseki* person fulfils certain requirements and goes through painstaking, long, and possibly expensive, legal procedures, which requires disclosing one's personal life story and struggles to several strangers. And even then, they might be unsuccessful. In short, it downplays the hardship of living without a *koseki*, and it probably stems from a generalized unfamiliarity with the *koseki* system and its ramifications among registered Japanese. This ties into what Endo (2018) writes about the *koseki* being like air, as its workings are mostly invisible as much as they are essential to everyday life.

As for the causes of the problem, all articles mention the legitimacy presumption of Article 772 of the Civil Code as the main one. Regardless of the political orientation of the newspaper, they seem to all agree that the reason for most cases is to be found in the law. The way that they describe this law varies from a Meiji-era law that keeps the now abolished *ie* family structure alive, to a law that is motivated by the moral imperative to protect children from being fatherless that needs to be adapted to contemporary times.

> The legitimacy presumption is a rule in effect since the Meiji period and had the aim of establishing paternity at an early stage and protecting the interests of the child. (Yomiuri, October 2022)

> As the configuration of families change rapidly, *mukoseki* children and child abuse have become major social issues. The subcommittee adapted the Civil Code, which was enacted during the Meiji period, to the changing times with the 'benefit of the child' in mind. […] the current regulations, which only allow husbands to deny paternity, have been criticized as perpetuating the *ie* system in which the head of the family (*koshu*) had great authority. (Mainichi, February 2022)

> This rule, known as the '300-day rule' was originally a presumption rule created to protect and give children a father, but now that highly accurate testing methods such as DNA testing are available, its significance is waning. (Toyo Keizai, July 2015)

What I found interesting about this, however, is that they never go into detail about what makes it so undesirable to register a child as the ex-husband's son or daughter. For example, they do not mention that if one chooses to do so, even if the information is changed later on, the name of the ex-husband

will always be on the mother's, and the child's, *koseki*. What they do often mention as a contributing factor is domestic violence.

> This provision is now having the effect of infringing on children's rights. For example, a wife who left home due to her husband's violence has a child with her new partner. Even if the wife wants to ask her husband for a divorce, she cannot go to court for fear of violence if her husband finds out where she is. (Toyo Keizai, July 2015)

> For various reasons, mothers do not submit birth registration to avoid [this rule]. […] For example, when a wife who is separated after running away from her husband's domestic violence (DV) has a child with her new partner, when she registers the birth, the child becomes the husband's child on the *koseki*. (Asahi, September 2018)

Some articles even mesh the two together as if the 300-day problem would not exist regardless of marital abuse.

> For example, even if a woman divorces her husband due to domestic violence, remarries another man, and has a child, if the child is born within 300 days of the divorce, the child will be registered in her ex-husband's family register. (Mainichi, February 2022)

While it is true that domestic abuse makes the solution of the 300-day problem much harder, and even impossible in some cases, by depicting the problem in these terms it seems as if without the shock-factor of domestic violence the 300-day problem, and women's choice to not register, would not be reasonable. On this note, it needs to be added that this phenomenon is always discussed with a focus on children and what they endure, as an injustice suffered by children alone. In is never discussed as an injustice towards the mothers as well. On the contrary, phrases like 'children become *mukoseki* because of the parents' situation (*oya no tsugō* or *oya no jōkyō*)' or 'children have no responsibilities for their parents' choices' are often used. Only when domestic violence is mentioned, the author would usually describe the mother's situation in sympathetic terms.

Regarding the resources and data that articles draw from, they mostly refer to the survey on *mukoseki* people (*mukosekisha ni kan suru chōsa*) that the MOJ has been carrying out since 2014. The survey, as has been pointed out earlier in this chapter, has a very low response rate and, therefore, reports much lower numbers than Ido's estimate. Ido Masae estimates that there are around 10,000 *mukoseki* people throughout Japan, while the surveys always report a few hundred cases. Due to the nature of this phenomenon, that makes people invisible to the state, no survey can ever be accurate, and it is safe to assume that the number of cases is much higher. However, the MOJ survey is the only data available, and the fact that newspapers refer to those numbers only is likely to cause an underestimation of the extent of the problem. On the other hand, it is interesting to note that many articles include comments by Ido. Although they are usually brief, the fact that the comments of the main activist and expert on the matter are often featured is very positive.

The last recurring element that I found in articles is regarding the 2022 reform. They often present the extension of the right to deny legitimacy (*hininken*) to mothers and children as a positive change that will help mothers of *mukoseki* children.

> The denial of legitimacy will also be revised, and the right of denial will be extended to mothers and children as well. […] From now on, even without her husband's cooperation, mothers and children will be able to take the initiative and claim that there is no blood relationship. (Mainichi, February 2022)

> A new measure will also be established to allow mothers and children to deny the presumption of legitimacy retroactively. Because under the current law they cannot deny [legitimacy], mothers hesitate to submit birth registrations, and this causes children to become *mukoseki*. (Nihon Keizai, December 2022)

> Furthermore, the right to deny legitimacy, which denies the father-son relationship, will be granted not only to the husband but also to the child. When the child is [too] young, the mother can sue on behalf of the child. If paternity is recognized in accordance with the actual situation, mothers will no longer have to hesitate to submit a birth certificate. (Yomiuri, February 2021)

Giving mothers the possibility to sue their ex-husbands for denial of paternity instead of having to ask their exes to sue themselves *sounds* helpful, even empowering. However, as Ido has been arguing since the draft was first published (Mainichi, July 2019), this measure will not have a positive impact on the *mukoseki* problem, because this particular procedure has many downsides, and most mothers prefer other options anyway. This is because on the mother's, and the child's, *koseki* there will be a record of the paternity denial and, with it, the ex-husband's name will forever be in their family register. I will go more into depth regarding this and why is it such a great deterrent in Chapter 4, where I discuss the reform process. Moreover, even if mothers were to choose this option and sue for paternity denial, their exes could still refuse to cooperate. Even though people may have different opinions regarding what should or should not be changed about Article 772 and the legitimacy presumption, this amendment is objectively ineffective. So it is misleading to present this measure as a possible solution to the *mukoseki* problem.

7.4 The *mukoseki* problem on Twitter

I turned to Twitter to analyse how the *mukoseki* problem is talked about on social media. I chose to focus on this platform because it is the second most used in Japan, with far more users than Instagram or Facebook (Statista 2022). Its features and the possibility to search posts by hashtag made it very easy to find relevant content and, unlike LINE, the most used social media platform in Japan, it does not limit visible posts to one's contacts. I analysed 147 between posts and replies that mentioned the word '*mukoseki*', written by 88 different users, between August and November 2022. I chose the posts and replies according to their relevance to the *mukoseki* problem, Therefore, I excluded the

many posts that mentioned the word '*mukoseki*' but were not about the *mukoseki* problem.[28] Of the total 147 posts, 65 were disparaging comments. Of which, a vast majority were on mothers of *mukoseki* children, accusing them of being bad parents. The post with more likes, retweets, and replies was among these. It was a comment on a short TV program on the *mukoseki* problem produced by TBS Television. Even though the video was uploaded on the TBS YouTube channel in November 2021, when I searched the hashtag '*mukoseki*' I still found many comments on it.

> TBS in a documentary called "Life as a *mukoseki*"
> «There are people who don't have family registers and don't go to school because their parents didn't register their births» they criticize the *koseki* in a roundabout way but
> no matter how you look at it, the parents who don't submit the birth certificate are human scum
> If people lose their *koseki*
> The "people of unknown nationality" will just largely increase.[29]

The anonymous user supposedly quotes the documentary in question and argues that, by talking about the legislation that causes the problem and pointing out the flaws in the *koseki* administration, they are criticizing the whole *koseki* system. The user then adds that the fault lies only with the 'parents' (*oya*), who are 'human scum' (*ningen no kuzu*). However, it is likely that they meant 'mothers', since the problem arises when the identity of the father is in question, and it is mothers who decide not to register. The last two lines also seem to refer to something they said on the documentary, and the user's comment shows a disregard for the consequences of being *mukoseki* or stateless. It also indicates that the user is probably aware of the reform of the Nationality Law, which has been criticized for likely causing many people to lose Japanese nationality and become stateless.[30] However, the user's comment mixes up this matter with the *mukoseki* problem, causing some confusion. Following are some more examples.

> A 30-year-old man was unable to attend compulsory education and the only *kanji* he can write is his address and his name. His mother is sinful (*tsumibukai*). His mother is quite young, and she seems to be suffering from an illness that makes it difficult to communicate with her, so she seems to have been punished accordingly. There are so many people like this...[31]

> "It's not that parents are to blame" → No, parents are usually to blame. If the parents acquire the child's nationality, this problem will not occur at all […] so don't selfishly give birth and then abandon them.[32]

[28] For example, some posts were about the film *Sora no nai sekai kara*, that came out in October 2022, or about the animated series *Lycoris Recoil*, that aired during that time. Although the show, of the 'girls with guns' action subgenre, mentions the protagonists being mukoseki, the setting is not realistic, and this element is not relevant to the plot.
[29] https://twitter.com/shin_shr190506/status/1560980029839839232 [Accessed on August 21, 2022].
[30] I will discuss this in further detail in Chapter 4.
[31] https://twitter.com/akeko_mei/status/1574050396410380294 [Accessed on September 25, 2022].
[32] https://twitter.com/hungry_angly/status/1560784673416294400 [Accessed on August 20, 2022].

> When I watched a documentary about *mukoseki* people I thought "the scum who don't submit a birth certificate should not have children.[33]
>
> No matter the circumstances, what kind of person would leave a child *mukoseki*? It's not wartime. It would make sense if it was due to an intellectual disability.[34]
>
> It's not a case that the government can do something about. It's the mother who should be blamed for not following the procedures according to Japanese law even though she was in Japan, isn't she?[35]
>
> The parents are at fault. The family register system has nothing to do with it.[36]
>
> The parents are just trash.[37]

And some negative comments were about Ichikawa Mayumi, founder of NPO *Mukoseki wo shien suru kai* (Association to support *mukoseki* people), who was featured in the TBS program.

> I watched [this video] because it came up as a recommendation, but the old lady claiming to be a supporter (*shiensha*) was too unreasonable. Rather than providing support, she seemed like someone who was just meddling with *mukoseki* people and complaining to the city hall. To call it support, all she did was go with them to the local government office...[38]
>
> I watched a news feature on the *mukoseki* issue, and the tone of the supporter attacking the civil servant at city hall was seriously unbelievable.[39]

As for positive comments, I found 17 posts that sympathized with the *mukoseki* people's situation, but especially with *mukoseki* children. And among them, only one was motivated by an understanding that the *mukoseki* problem is not the mother's fault.

> Solving the *mukoseki* problem would be too easy.
> All you need to do is create a one-person *koseki* leaving the parent's name blank.
> Not creating one is negligence on the part of the government.[40]
>
> I've heard of *mukoseki* people, but it takes a lot of time and effort, and it costs money to collect information and apply for procedures, but they can't get a regular job...I felt really sorry for them.
> The background to why he became *mukoseki* is complicated...
> I wish we lived in a society where people are considerate and support each other.[41]
>
> When I first learned about *mukoseki* children in Japan, I was moved to tears. They can't even go to elementary school...[42]

There were also 15 posts that included mistaken information on the *mukoseki* phenomenon.

[33] https://twitter.com/merrrrrr_____/status/1564641218508001280 [Accessed on August 31, 2022].
[34] https://twitter.com/qWFsVUMESWDj5Zz/status/1559807360025362432 [Accessed on August 20, 2022].
[35] https://twitter.com/bm_yasu/status/1561278899749015552 [Accessed on August 21, 2022].
[36] https://twitter.com/KaIntial/status/1560980473509081088 [Accessed on August 20, 2022].
[37] https://twitter.com/setunafseieiga1/status/1561694614700326912 [Accessed on August 20, 2022].
[38] https://twitter.com/arei_bump_63/status/1568243927215673345 [Accessed on September 9, 2022].
[39] https://twitter.com/dontmiss5/status/1557183577183252480 [Accessed on August 10, 2022].
[40] https://twitter.com/6yzND8OZJhVCV3V/status/1561802788514177024 [Accessed on August 22, 2022].
[41] https://twitter.com/Ns_Moccos/status/1561728869165842439 [Accessed on August 22, 2022].
[42] https://twitter.com/Pachyceviatorem/status/1558049993130266624 [Accessed on August 12, 2022].

> The *mukoseki* problem has long been resolved.[43]
>
> Japan has a strong *koseki* system, so there are very few *mukoseki* children.[44]
>
> [Parents] may not want to send their child to school because they are the child of a partner who is not their spouse, or their parents are mentally retarded, and they cannot afford it.[45]

In conclusion, there was a prevalence of negative comments, and a prejudice against mothers of *mukoseki* children seemed to be common among users, and there was a stark absence of posts expressing sympathy towards them. On the other hand, posts sympathetic towards *mukoseki* children were numerous, denoting a general understanding of the phenomenon as a problem for the children alone, and not for mothers as well.

7.5 The internal point of view

Freelance journalist, politician, and activist Ido Masae has published two books on the *mukoseki* problem and has written for major newspapers such as the Mainichi Shinbun and the Toyo Keizai Shinbun. She is also frequently interviewed by newspapers and on television, and she has been featured in the documentary *Of Love and Law*, by Toda Hikaru. No other first-hand account of the *mukoseki* problem is available, other than a few anonymous interviews on television, and some very rare non-anonymous interviews. Recently, Ichikawa Mayumi's work with the NPO *Mukoseki wo shien suru kai* has been featured on television and newspapers. However, she did not have first-hand experience of the *mukoseki* problem until she started helping people around her who did. Since Ido Masae is famously the spokesperson for everything related to this phenomenon, in this paragraph I chose to focus on how she talks and writes about it. Comparing it to the material analysed previously can shed light on the gap between how the *mukoseki* problem is understood by majority-Japanese, and the way it is lived by people who experience it. The contrast is remarkable. This is not only due to her expert knowledge, but also the two decades she spent advising and accompanying mothers and *mukoseki* people in their registration journey. Although Ido is usually interviewed more as the expert on this phenomenon, for her opinion on policies and the reform, in her second book *Nihon no mukosekisha* (Ido 2018) she gives a very personal and emotional account of her experience as a mother of a *mukoseki* child. She also recalls the stories of some of the people she helped, how she met them and what they did to obtain *koseki* registration.

From the very first lines, Ido's position is clearly one of criticism of the government and of Article 772. Ido explains that most cases are caused by the 300-day rule. She does include parental neglect

[43] https://twitter.com/urrego_enurj/status/1591828769383514112 [Accessed on November 13, 2022].
[44] https://twitter.com/sollevante2022/status/1562371306561351682 [Accessed on August 24, 2022].
[45] https://twitter.com/taneali/status/1552391835179397120 [Accessed on July 27, 2022].

and abuse among the possible causes for the *mukoseki* problem but clarifies that they are a very small number of cases, and that most parents are desperate to register their children, but they find themselves facing an impossible dilemma. The author often reminds the reader of this using expressions such as *shusshō todoke wo dasenai* (not being able to register a birth certificate) instead of *dasanai* (not registering). In other words, the fact that parents fail to fulfil their legal responsibility to register their children is understood within its context and reasonably justified. However, the book focuses on cases of adult *mukoseki*, which are fewer than ones caused by the 300-day rule but are caused by much more complex circumstances and are much more complicated to solve.

Differently from most newspaper articles, Ido does not refer to the MOJ survey and instead uses more realistic estimates on the number of children who go unregistered each year, and on the total number of *mukoseki* people, while also explaining in detail how this estimate is calculated, giving the reader a much more accurate idea of the extent of this problem (Ido 2018:25). Another important difference regards the way in which Ido describes the long and difficult procedures that parents, or adult *mukoseki*, must face to get a *koseki*. For example she talks about the financial cost.

> In fact, there are two types of people who consult with me regarding this problem whose number stands out. The rich and the poor. […] The wealthy are still fine. Even if their child becomes *mukoseki*, they can still pay the lawyer's fees, so they have a variety of options. However, people who are dealing with poverty are immediately daunted by the mere idea of mediation or litigation. If you do it yourself, it would cost around 3,000 yen[46], but when you have no experience in writing public documents it's difficult if you're suddenly told "do it". (Ido 2018:69)

But she also explains what the emotional cost is. For example, for a *mukoseki* adult who cannot provide a birth certificate and whose parents are unknown, the *shūseki* procedure is the only option. This procedure allows the creation of a new *koseki* for the person in question since no parent-child relationship can be verified. For the same reason, the biggest obstacle that someone must overcome when doing *shūseki* is proving that they are Japanese. They are automatically suspected of being foreigners illegally seeking Japanese nationality and are treated like suspects of a crime.

> Until you are recognized as a human being, you cannot complain no matter how you are treated. Their fingerprints are taken, and they are made to strip and searched. The method is the same as for interrogating criminals. If you keep being treated like this, you will start to feel like you are actually doing something wrong. Even if you can endure it, you will still be tense until the very end. (Ido 2018:98)

This is what Ido writes when recalling time she witnessed a young *mukoseki* man being asked to take off his shirt by an investigator for the Family Court, to show his arm and prove that he never got the

[46] About 30 US dollars.

tuberculosis vaccine. Proving that he did not have a scar, because he did not receive the mandatory vaccinations, was a necessary step for his case to be taken into consideration.

From her two-year legal battle and that of the thousands of people she has helped, in her book it appears clear that the *mukoseki* problem has no easy solution, contrary to what the MOJ presents, and in some cases might be impossible to solve. Moreover, the difficulties of living without a *koseki* are stated clearly and in detail. She adds that even though there are measures in place for *mukoseki* people to access public services, there are many instances in which they cannot. One of the many examples that she gives is that of the *boshi techō* (the maternal and child health handbook).

> Since she does not have a resident card, she cannot receive a *boshi techō*. In the obstetrics and gynaecology department she was scolded for not bringing it with her and was told to "make sure to bring it next time", so it became difficult for her to go there. (Ido 2018:100)

But the hardship of being unregistered is not limited to that, as Ido writes through the words of the many *mukoseki* people she encountered. It is also about feeling fundamentally different from everyone else, and the loneliness that comes with that.

> When everyone entered elementary school, they started carrying backpacks and going to school, but I didn't go. They did buy me a backpack. I think my mother bought it so that people wouldn't know that I wasn't going to school. [...] When everyone got home [from school], I'd pretend I had just come home too, and we'd play. But it felt kind of wrong, and it became painful lie in the first place... In the end, I ended up avoiding my friends. (Ido 2018:76)

Not being able to go to school does not only mean not receiving an education, but it also means living in social isolation. And the weariness of pretending to be like everyone else leads many to self-isolate.

Although the book is focused on adult *mukoseki* and their experiences, Ido also tells the story of some of their mothers. And this allows the reader to understand how difficult the circumstances that led to them not registering their children are. Ido includes cases where the mother could not have registered them even though she wanted to, but also cases where it was a deliberate choice. But, for both, she offers a backstory, an explanation. She does not justify the ones that could have registered, she only relates what the *mukoseki* children told her without judgement. The reader is left to make up their own mind. Nevertheless, she has given these mothers a name and a story, something that newspapers rarely do and never in such detail. In other words, she makes them real in the eyes of the reader, and she shows the complexity of their situation, making it difficult to make a black-and-white judgement. I will give two examples. One is that of Yoshiko, mother of Fuyumi, who was born in a small rural village in the 50s. In the village lived about 2,000 people, and young men mostly left to find work in the cities, never to return. So when a young man, Kenji, moved to the village Yoshiko's mother invited him to stay with them since Yoshiko's father had died and they needed help to work in the

fields. Yoshiko, who was almost eighteen, was told by her mother she should marry him to avoid the neighbours' gossip and the union was arranged. In the following twelve years the man often got drunk and was violent towards her and the five children they had. At some point the violence got worse.

> Kenji's violence became even worse after that. When he got drunk, he would bring out a knife and act violently. He even put it to the baby's neck. (Ido 2018:81)

Later Yoshiko found out that all the time Kenji had lived with her family, he and her mother had been having an affair. She was shocked and humiliated but could not do anything about it. When one day a male colleague drove Yoshiko home from work, Kenji saw them and seeing her with another man, he ran towards her with a sickle and threatened her to kill her and her children. So she was forced to leave home never to come back, and to leave her children there. She was unable to divorce her husband for over thirty years, and when she had Fuyumi with her new partner, she could not register her. If in Yoshiko's case it is easy to place the blame on the abusive husband instead of Yoshiko, in this second example it might be more difficult to justify the mother's choice. Akira's mother, Setsuko, ran away from home a month before graduating middle school. She wandered aimlessly around Tokyo until she was found by some *yakuza* and was forced into prostitution at a very young age. Years later she fell in love and ran away with a man, but he eventually abandoned her. So she started roaming from one town to another and finding clients on the street. She got pregnant when she was twenty-five and had no money for either an abortion or go to the hospital, so she gave birth by herself in a hotel room. She had a boyfriend at the time, but she could not know for certain whether the father was him or one of her clients. When Akira was old enough to ask questions, she told him that she did not register him because children at school would bully him for not having a father. In Setsuko's case, the decision to not register Akira is clearly a form of neglect because she was not married and the identity of the father was not in doubt, since Akira would not have a legal father unless someone acknowledged him. She would not have had any difficulty registering him. And although Akira might have been bullied for not having a father, the consequences of being *mukoseki* were far worse. Nevertheless, having the full picture, that of a woman who was forced into prostitution at a very young age, who was abused herself, it is easier to understand what led her to that, even though it does not justify her. In both cases the readers can get to know these mothers and maybe put themselves in their shoes. While in other representations of the *mukoseki* problem this is rarely possible, and these women remain abstract and faceless.

The way Ido discusses the *mukoseki* problem in her articles and her interviews is also noticeably different from other kinds of representation. For instance, in an article published on Toyo Keizai on 14 April 2018 she writes about the highly problematic gap between the government and the local

administration in terms of measures towards *mukoseki* people. One of these measures, all in the official notice (*tsūtatsu*) form, allows *mukoseki* people to get a residence register. But not all local governments' staff are aware of these measures. As Ido writes in her article: «there is a difference between what can be done institutionally and what can actually be done. There are many conditions that must be met to implement the measure. Each step becomes a 'negotiation'» (Toyo Keizai April 2018). She gives the example of marriage.

> The process [of getting married] is as difficult as, or even more difficult than, the process of obtaining a *koseki*. When getting married, documents that can confirm the gender of the *mukoseki* person (such as a birth certificate) and written statements from the mother, father, and others as to why the *mukoseki* person is *mukoseki* must be submitted. There are so many that most people give up. They have no *koseki* because they have no documents to begin with. (Toyo Keizai April 2018)

In an interview, also on Toyo Keizai, Ido takes her critique of the government further and accuses it of neglect.

> I believe that this is a type of abuse of children, neglect, perpetrated by the state. They are pretending not to see and ignore children that are actually out there and are struggling. (Toyo Keizai March 2016)

She also talks extensively about mothers of *mukoseki* children and explain their choice, something that I have not found in any other newspaper article.

> When I submitted a birth certificate I was told by the local office: 'this child cannot be recognized as your current husband's child, you must submit a new birth certificate as the ex-husband's child', and I was astonished. Who could accept something like this? There was no way I could submit a birth certificate as the child of my ex-husband, who has no connection [to my child], and the child was left *mukoseki*. (Toyo Keizai March 2016)

Even though the consequences of being unregistered are dramatic, it is important that when talking about the *mukoseki* problem the consequences of registering, in these circumstances, are also considered. She also addresses the controversial topic of adultery and the preconceived idea that the 300-day problem only arises when a married women has extra-marital relations.

> It is true that there are people who throw such words at *mukoseki* children and their parents, and it is very unfortunate. There are cases where a woman becomes pregnant with a child from someone other than her husband before divorce, but in most cases, this cannot simply be called 'adultery'. If you left home due to your husband's domestic violence and were unable to get a divorce even after being separated for a long time, or if you decided to divorce but the divorce papers were not filed, etc. There are many cases where marriages break down, and even under civil law, it is not determined to be 'infidelity'. However, even if it was an affair, discrimination against the unborn child is unacceptable. (Toyo Keizai March 2016)

She explains that the *mukoseki* problem usually arises when circumstances are complicated and, usually, when a marriage has already broken down. However, she does not discuss this further and shifts the focus from mothers to children and how they should not suffer negative consequences.

When Justice Minister Yamashita announced that the legitimacy presumption system would be reformed, in 2019, Ido wrote an article for the Mainichi Shinbun commenting the news. In this article she is very critical of the government's treatment of women, she openly calls Article 772 discriminatory, and she talks about a 'punitive mindset' towards divorced women.

> Are Japanese men afraid of women? […] Although the wife and child are related by blood, only the wife knows whether her husband is really the child's father. Conservatives fear this. In other words, male lineage rests on [the premise of] the wife's faithfulness. It cannot be certain, and it causes fear, so they must restrict the wife's actions in some way. The rule that it is still the ex-husband's child even 300 days after divorce could be there just because of men's insecurity and resentment. […] This country doesn't trust women. (Mainichi July 2019)

However, she hesitates to use openly feminist arguments on social media. In an interview, she explained how difficult it is to be publicly feminist on Twitter, for instance, by telling me about something she posted about a feminist woman who sued her online trolls and the backlash it caused.

> While there is no discussion of the true roots of the issues concerning women, or the Civil Code, […] they made such a fuss over such a superficial matter. Behind that there is also [a desire to] crush feminists. In the end, since you are attacked like that if you support feminists, nobody can support them. (Ido Masae, 19 November 2022, Tokyo)

And, especially within the political debate, Ido feels she would not be listened to if she put women's rights at the forefront of her strategy, so she shifts the focus on children.

> If you go that way they won't accept it, society won't accept it, so then we appealed to them […] by saying 'think of the poor children', and also, well, the newspaper Mainichi Shinbun […] in the beginning they were [focusing on] the problem of the 300 days after divorce, but along the way, how to say, they changed strategy from that to focusing on the direction of 'the poor children', and we did the same. And it looks like, in that respect, Japanese society today hasn't changed from back then. I think that it has its origin in misogyny and discrimination of women and the like. (Ido Masae, 19 November 2022, Tokyo)

This will contextualize the strategy that Ido adopted when she participated as a witness at the Judicial Affairs Committee of the House of Councillors, which discussed the reform of the legitimacy presumption system, on 6 December 2022 (see Chapter 4, paragraph 4.2).

Chapter 4 – Voices from the field

1. The mothers

1.1 Ido Masae

Before 2007, when the national newspaper Mainichi Shinbun started its campaign on the *mukoseki* problem, hardly anyone knew about it. So in 2002, when Ido's fourth son, Migoto, was born, she was completely unaware of the struggle she was going to face. Ido had gotten married in 1990 and then separated from her first husband in 1998, when she started divorce negotiations that carried on for four years. The divorce finally became effective in 2002. At the time, women were not allowed to remarry for the 180 days after divorce. So she waited six months before getting married to her second husband. During those six months she got pregnant with Migoto and gave birth a few days after registering her second marriage. She had waited for six months before remarrying, was legally married to her new partner, had gotten pregnant *after* divorce, and she had been estranged from her first husband for four years. So it did not even cross her mind that the paternity of Migoto would be put into question. He was born on 27 November 2002, slightly premature, as it was for all of Ido's pregnancies. That was the reason why she was preventatively hospitalized for two weeks before giving birth.

The day she was discharged, her current husband, Migoto's biological father, went to the local office to submit a birth certificate. Everything seemed to go smoothly. Not for one moment did they doubt that the document would be accepted. This is what Ido-san recalls from those first few hours home with her new-born baby.

> In that room that I hadn't seen for so long, the winter light shining through the lace curtains was illuminating the crib that my husband had assembled while I was in the hospital. I carefully laid the baby in there and raised the enclosure. […] My baby, sleeping soundly, never woke up despite being in a new place. As I covered him with a blanket, I was overwhelmed by an overwhelming feeling of love. It's my fourth child. My being so careful in handling a new-born baby, even though I should have been used to it, made me smile. (Ido 2018:45-46)

A few moments later, Ido received a call from an unknown number. It was the local office of Ashiya, where she lived, telling her that the Migoto's registration could not go through. The birth certificate was incorrect, they said, because it listed Ido's current husband as the father. Migoto was born only 265 days after the mother's divorce. As Ido-san's three children before him, her pregnancy lasted around 36-37 weeks, instead of the average 40 weeks (280 days). And so, according to the 300-day rule of Article 772, Migoto was presumed to be the legitimate child of Ido's ex-husband. Ido-san was told that according to the law the child must be registered accordingly. He would have to be entered

into the ex-husband's *koseki* and get his surname. She was shocked. Neither she nor her husband knew anything about this rule. She did not want to have anything to do with the man she had spent four years trying to divorce, let alone assigning him legal paternity of her new baby. Desperate to find a solution, she asked the local offices what she could do, but they did not know how to help her. There seemed to be no other options. She recalls being told by one of the *koseki* officials that it was the «penalty for divorce» (Ido 2018:47). When the office threatened to create a *koseki* for the child *ex officio* with the ex-husband as the father, Ido knew she had to take the matter into her own hands and fight to prevent that. At the time, there were only two ways to challenge Article 772 and prove that the child was not conceived with the ex-husband. The first one was denial of legitimacy (*chakushutsu hinin*) filed by the ex-husband against the ex-wife. The second one, confirmation of absence of parent-child relationship (*oyako kankei fusonzai kakunin*), could be filed by the mother, the child, or the biological father against the ex-husband. Both inevitably involved the ex-husband, without whose cooperation it would have been impossible to challenge Article 772. Ido's divorce negotiations had dragged on for four years and were just recently concluded. She was emotionally drained and did not want to face her ex-husband again, let ask for his help. She strongly felt that since he did not have anything to do with her child, it was unfair that he had to be involved. Appalled by this law and by the absence of bureaucratic and legal infrastructures to solve this problem, she started studying the Civil Code and court procedures. Despite struggling with the legal jargon, among the many Domestic Relations (*kaji jiken*) precedents that she examined, she found a procedure that could be applied to her situation and did not involve the ex-husband. It was a mediation to make the actual (*jijitsujō*) father acknowledge the child, with a procedure called acknowledgement mediation (*ninchi chōtei*) or forced acknowledgement (*kyōsei ninchi*). It required her to prove that Migoto was not the ex-husband's child, but it would allow her to avoid involving him. However, there were two big problems to overcome. First, at the time, there were very few ways to prove in court that a child was not conceived with the ex-husband, for example proving that ex was incarcerated or abroad at the time of conception. The fact that the pregnancy had started after the divorce, something that her physician could prove, was not taken into consideration. Second, there were no precedents of using forced acknowledgement to solve a *mukoseki* case. Ido could not be sure that it was a viable option. So she turned to the National Diet. She hoped that by reaching out to the country's representatives and explaining the irrationality of the law that created her son's *mukoseki* problem, things might change.

Before becoming a freelance journalist, she had graduated from The Matsushita Institute of Government and Management, and she was no stranger to the Diet. She identified the members of the House of Representatives and the House of Councillors that might be sympathetic to her cause

and went to visit their offices, roaming the hallways of the old Diet Members Building (*giinkaikan*) pushing Migoto's stroller. But she only got vague answers, and no one seemed to be willing to commit to the cause. After two hours of being turned down she was rather discouraged. An acquaintance from her time in the Matsushita Institute, former Member of the House of Representatives Ichimura Koichiro, had arranged for her to leave her belongings in Kawamura Takeshi's office. So she went there to catch her breath and to take care of Migoto. By chance, Kawamura was there and, as Ido speculates in her book, maybe out of respect for his *senpai* Ichimura or maybe out of compassion, he invited her in his private room and listened carefully to her story and her requests. «You paid for transportation to come here, you came all the way to the Diet Members Building, it's a shame. Now we go to the Ministry of Justice. We'll meet the Head of Civil Affairs» (Ido 2018:51) he said. The Head of Civil Affairs, who was Fusamura Seiichi at the time, is a powerful figure in the MOJ. A few moments later, Ido-san was facing Fusamura and four other MOJ officials. She asked them whether it was possible, in her situation, to file a forced acknowledgement procedure against her current husband, who was willing to acknowledge Migoto. The four officials started looking for an answer in the six codes of Japanese law (*roppōzensho*) and none of them had any objections. The Head of Civil Affairs himself reassured her that it was possible. And he added:

> Of course, we [at the MOJ] realize that Article 772 is not perfect. But to change a law we need citizens to raise their voice, and several precedents are necessary. At the MOJ we all have a legal mindset. It's absurd that a peaceful family must start a [legal] dispute of convenience and make the husband 'the accused' for him to be recognized as father. Maybe if this [forced] acknowledgement procedure was to become normalized for Article 772, [government] officials won't be able to stay silent. They will understand the need to reform the law. In my opinion there is no need for a reform, we could just have people check a box stating 'children born after divorce are not mine, I refuse the acknowledgement' on the divorce papers. This is something that we can do immediately, without a reform. (Ido 2018:52-53)

But now Ido had to put this hypothesis to the test in court. Hopeful, she filed for a forced acknowledgement mediation, only to have it rejected a few days later. She was told that since there were no precedents, it would not be a mediation but a lawsuit. Knowing that a trial would be more difficult for her alone, she started looking for a lawyer, but everybody turned her down, always for the same reason. There were no precedents and therefore no hopes to win the suit. The only option for Ido and her husband was to do everything themselves. The day of the hearing came and Ido, her husband, and Migoto headed to the District Court. Ido's husband, as the accused, presented a statement accepting Ido's request. Had it been a normal trial the judge would have reached a decision immediately, however, the presiding judge said that a conclusion could not be drawn based on the fact that both parties agreed on who is the father, because «the State decides who the father is» (Ido 2018:54). After hearing this, Ido was sure she would lose the suit. One month later, however, the

court surprisingly ruled in her favour and Ido's husband was accepted as Migoto's father. One year after that dreadful phone call from the local office, they could finally give Migoto a *koseki*. The day after, the newspapers defined the ruling 'historical'. This is how Ido describes that year.

> My newborn child didn't have a *koseki* and we couldn't register him in the *jūminhyō*. It was such a time of anxiety, about whether he would be able to receive sufficient protection and services from the State and the municipality, starting from health care, that even though it lasted only one year, it took a toll on my mind and body. The fear that it would last forever weighed heavily on me. […] To all appearances, child and wife won the suite and the husband lost. But that strange sentence was one that made both sides happy and that everyone agreed with. (Ido 2018:55-56)

Now that her son had a *koseki*, Ido decided that she would do everything in her power to prevent other mothers from enduring the consequences of such an unreasonable law and being robbed of the happiness of giving birth. She created a website where she shared her experience and the details of her lawsuit, and she founded the non-profit 'Society for Parent-child Act Reform' (*oyakohō kaisei kenkyūkai*) and later the 'Association of Families of Children Unregistered because of Article 772'. In the twenty years that followed she met and helped solve over 3,000 *mukoseki* cases, by referring them to knowledgeable and sympathetic lawyers, providing records of legal precedents that are not accessible to the public[47], giving advice on the procedures to follow based on her expertise, and helping mothers of unregistered children and adults to access services such as healthcare, education, and welfare. She wrote countless articles for various news outlets about the issue, and helped journalists get in touch with people affected by Article 772. Ido also advocated for a reform of the law, as a member of the National Diet when she was elected in the House of Representatives between 2009 and 2012[48], and, as a private citizen, consulting for several members of both Houses. When she first began her activism, in 2003, computers were still not widely used and therefore very few people had access to her website and were able to contact her. Before the national newspaper Mainichi Shinbun started its campaign on the *mukoseki* problem in 2007, only mothers who could afford a computer and an internet connection reached out to her. Theirs were straightforward cases, much like Ido's case was, and for the most part they could be solved relatively easily, thanks to the precedent that Ido had created.

> At the time it wasn't [like today] when everyone has a computer in their home or uses a smartphone to get information. At the beginning most of the cases that I got were households who had access to a computer […] or [people] who had read an article [about the organization]. So in the beginning there was almost no need for livelihood support (*seikatsu shien*). Most of them couldn't create a *koseki* [for

[47] Family Court cases are rarely published because of privacy concerns, and mediations are never published, which makes it very difficult to access legal precedents. For the same reason, I was not able to access them. The one's Ido had archived, she was not authorized to share with anyone other than someone in need of precedents to refer to for their own lawsuit.
[48] She ran for the 45th general election of the House of Representatives and was elected as representative of Hyogo, 1st district.

> their child] because they wanted to avoid involving their ex-husbands in a lawsuit. (Ido Masae, 14 June 2021, Tokyo)

At the time, most government officials were completely unaware of the *mukoseki* problem and did not know how to help divorced mothers who were caught up in the 300-day rule, and none of the measures that have now been taken to alleviate the correlated issues had not been taken yet. Ido's support was vital for these women.

1.2 Kawamura Mina

One of Ido's earliest cases was that of Kawamura Mina, in 2006. Sakamoto-san introduced us via email, explaining that Kawamura had been the representative for Ido's non-profit in Eastern Japan. Kawamura warned me that her knowledge on the matter might not be up to date because things were very different when her son, Ko, became *mukoseki*, and she was worried that her testimony would be of much use. I reassured her of my interest in her story and she agreed to the interview, and asked if she could bring her son, who was now sixteen. She thought it would be a meaningful experience for him to talk about this inside a university, so we decided to meet at the Waseda campus on a Saturday morning. She had brought a copy of the book on the *mukoseki* issue published by the Mainichi Shinbun (2008). She pointed at the picture of a tiny premature baby in an incubator on the cover of the book and said, «this is Ko».

Kawamura and her son's case had been on the news at the time, because it was a peculiar one. It shocked public opinion because the only reason she got caught up in the 300 days rule was that Ko was born severely premature. He was born after only seven months of gestation, 292 days after Kawamura's divorce. It was within the 300-day window by only eight days. Mina Kawamura had divorced her first husband and moved back to Tokyo, where she fell in love with a childhood friend. They decided to get married and waited the mandatory six months, during which she got pregnant. At the time, the Mainichi Shinbun had published the very first article on the *mukoseki* problem on 24 December of the same year, so she was aware of the 300-day rule, was relieved to find that her due date was well past the 300-day mark. But there were unexpected complications, and her baby was born prematurely. Not only she had to cope with the fear of losing her son, who needed intensive care for several weeks, she also had to find a solution for her son's registration. All while recovering from a traumatic birth that had a great impact on her physical health. As soon as she regained consciousness after labour, she emailed the Mainichi journalist who was writing about the *mukoseki* problem, Kudo Akihisa. He offered to go with her to the local office.

Kawamura-san already knew that they would not accept her son's birth certificate, but she agreed to try. At first, the journalist stood behind her without interfering, as she talked to the civil servant. When she approached them alone, she recalls that «they said 'it's impossible', in a very business-like manner» (Kawamura Mina, 1 October 2022, Tokyo). But when Kudo intervened to ask for an explanation, introducing himself as a journalist, they completely changed attitude and called a superior.

> The attitude of the ward office changed completely, and a more important person 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 Mina, 1 October 2022, Tokyo)

Kawamura-san was not alone in this experience. As Ido-san explained to me, it is not rare for mothers to be quickly dismissed by government officials, who rarely know how to respond to their inquiries. This was especially true before 2007, when only people directly affected by the *mukoseki* problem knew about it but is still the case today. Civil servants working in the local offices are rotated in different departments every few years, and so there are no senior employees with enough experience to deal with exceptional cases. Sometimes, the staff member interacting with the public might even be a temporary worker with no experience at all.

> When something problematic occurs and the mass media picks it up, everyone becomes aware of it for a while, but civil servants in Japan generally have to rotate once every two years. So, because they are assigned[49], and because no local government has [a lot of funds], for example, if the nursery school is closed, the nursery teachers might be assigned to the *koseki* department. There are these transfers. Registration procedures are extremely difficult, and it's an area where you need a veteran, but there's no such thing as a knowhow transfer [from old to new employee]. And, well, *mukoseki* cases are not very frequent. If it's only a few times a year, there is no accumulation of experience. They sit at the counter without any experience, and now there is [also] a company called *Pasona*, which is a temporary work agency in Japan, and [local offices] outsource the work of the family register counter. (Ido Masae, 14 June 2021, Tokyo)

Given the rigidity of the registration system and Article 772, it is understandable that a lack of knowledge regarding registration procedures, Koseki Law, and the Civil Code, might cause civil servants to respond as they did to Kawamura-san, with a mere '*dame desu*', 'it's impossible'. In her case, the presence of a reporter motivated the *koseki* official who first received her to consult with a superior and provide an explanation. But it is easy to imagine how this would not happen in most cases, when women advocate for their children by themselves. Kawamura did not receive any more help from the local office, and it was Ido-san who told her that even without a *koseki* her son might be able to be registered in the residence register, the *jūminhyō*. As a rule, Japanese nationals must

[49] In the past, civil servants applied for a specific department or area before taking the national exam and were hired accordingly. They were likely to stay in the same job description until retirement. But now one they pass the exam they are assigned to a certain office and might be assigned to different ones during their employment.

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 ward can approve a temporary residence register on a case-by-case basis. This was possible even before the official notice of 2012, but the choice was left to the head of ward. Ido-san knew that it was possible and there had been precedents, so she urged her to ask the Sumida ward, where she lived, to register her son's residence. This would allow her son to access public services. Fortunately, they agreed. It was not a long-term solution, and she had to prove that she was taking legal action to provide the baby with a *koseki*, but Ko was able to get his vaccinations and his mother was able to breathe a sigh of relief, for the time being. It was by chance that the Sumida office proved understanding and agreed to Ko's *jūminhyō*.

> I heard later that it was the case in Sumida Ward, but there were people who were told that wasn't possible in Saitama Prefecture, and Saitama City, and couldn't get a *jūminhyō*. I was surprised that the responses changed so much. It just so happened that Sumida Ward was understanding and kind to me, so that was good, but in Saitama, I wouldn't have been able to get a *jūminhyō*. (Kawamura Mina, 1 October 2022, Tokyo)

Ido explained to Kawamura about the forced acknowledgement (*kyōsei ninchi*) procedure, the one that she created the first precedent for, and how she could use it to prove Ko was her husband's son. So she filed for *kyōsei ninchi*, forced acknowledgement, to the Family Court. By that time, many women after Ido had used the same strategy and there were many precedents. So, unlike Ido, Kawamura was able to avoid a trial and undertake mediation (*chōtei*). In the meantime, she was trying to recover from childbirth while also meeting with reporters and politicians to talk about her experience and ask for a change in the legislation. In 2007, after the start of the Mainichi campaign, several members of the National Diet, across different parties, launched a project team on the *mukoseki* problem (see Chapter 3, paragraph 6), and hers was one of the testimonies that Ido brought to the attention of the politicians.

> When we were featured by the [Mainichi] *mukoseki* campaign, all kinds of media interviewed us, and we were featured. Even though in many *mukoseki* cases, [the mother] is running away from her husband because of domestic violence, and that's why the child is *mukoseki*, my case wasn't like that, [Ko] was simply born early. But, even so, just because of that [Ko became] *mukoseki*, so it was an example of this absurdity that was easy to understand. So, I also volunteered to be interviewed, so at that time, various TV stations, well, overseas TV stations came to listen to my story, and the public sentiment that this was wrong grew. My example was easy to understand, he was just born prematurely, but he was *mukoseki*. (Kawamura Mina, 1 October 2022, Tokyo)

The project team's aim was to amend Article 772 with a private member's bill (*giin rippō*), but the ruling Liberal Democratic Party stopped it, and instead the Head of Civil Affairs Bureau of the MOJ issued an official notice (*minji kyokuchō tsūtatsu*). It did not change the law, but it created a way for some mothers to avoid going to court. It allowed mothers to use a doctor's note that confirmed the date of conception as proof that it occurred after divorce. They could bring that, along with a birth

certificate, to the local office and avoid registering the child as the ex-husband's. Even though Kawamura was almost through her *ninchi* procedure, having met for mediation three times, she and her husband decided to use the doctor's certificate of post-divorce conception instead. If they had gone through with the acknowledgement mediation, on Ko's *koseki* there would have been the record of the procedure. And Kawamura said her husband «didn't like that phrase, that made it sound like he didn't want to acknowledge, because he wanted to make him his child» (Kawamura, 1 October 2022, Tokyo). One of the main characteristics of the *koseki* system is the permanence of information. Nothing is ever deleted from a family's *koseki*, and in this case the phrase 'forced acknowledgement' would have been in their *koseki* forever. Technically, Ko's father was being forced to acknowledge him. But he wanted to register Ko as his own son as much as his wife did and worried for his *mukoseki* status just as much. Even though from the institutional point of view he was being forced, that was far from the truth. So when the MOJ notice was issued, they jumped at the opportunity, contacted Kawamura's busy Ob-Gyn, and got the medical certificate.

> I was given strange instructions, the person in charge told me to have the Ob-Gyn write everything down on a medical record, starting with conception, sperm, and egg, and bring it to them. I was surprised to hear that I had to ask Ob-Gyn to write about the conception. The doctor was a very busy person, and in fact, when I was still pregnant, she was so busy that she didn't even look at me during check-ups. I was so sorry to bother the doctor with the medical records, but she did it. (Kawamura Mina, 1 October 2022, Tokyo)

They submitted the doctor's certificate along with Ko's birth certificate and, after five nightmarish months, Ko was finally entered into their *koseki*, as his parent's son. Since the birth certificate was not accepted in the beginning, Kawamura-san and her husband had to pay the full 800,000 yen (approximately 6,000 euros) for the special care that Ko required, which would have been paid for by the local government. Nevertheless, they were relieved it was finally over. Kawamura describes that time as mentally and physically exhausting.

1.3 Saito Yukiko

Differently from Ido and Kawamura, in some cases mothers of *mukoseki* children have been abused by their ex-husband. When domestic violence is involved, the problem is usually much trickier to solve. It goes without saying that an abusive ex-husband is not likely to cooperate with his ex-wife. Especially since the matter involves a child conceived with another partner. There are two possible scenarios. In one, the wife manages to get a divorce from the abusive husband and has a baby within the 300 days after divorce. This case is much like all others, but with the added difficulty of the lack of cooperation from the ex, or the risk that involving him would cause harm to the mother and/or the child. In the second scenario, the wife has fled the abusive husband and was unable to get a divorce.

A woman who is still married, despite being separated, and has a child with a new partner, will not be able to register the child other than in the husband's *koseki*. This dilemma is created by the first paragraph of Article 772, which assigns paternity of all children born in wedlock to the husband, not by the 300-day rule. These cases are more complicated than others because at the time of birth the mother was still married. In both scenarios there are also other factors that can prevent women from seeking help, such as fear of retaliation from the ex and the stigma associated with deviation from the hegemonic sexual script. A wife who has a child with a man who is not her husband has, technically, committed adultery, which is a crime in Japan. Not only, adultery and giving birth out of wedlock are also socially frowned upon. Among my informant there was one of these cases. Ido describes the case of Saito-san, as the hardest one she has ever encountered.

> The most difficult one is... Well, every case is difficult in its own way, but this one is still unresolved. In most [of my] cases they have been able to obtain a *koseki*, but there are some where it's impossible. One of them is a very serious case of domestic violence, both from the ex-husband and from the de facto father of the child. In the case [of this woman] the father […] held her prisoner. He held her captive at home and for three years after she gave birth, she couldn't leave the house. Then she escaped with her child. (Ido Masae, 14 June 2021, Tokyo)

When Saito-san started discussing divorce with her husband, he started threatening her and being violent. She was afraid of him and confided in an acquaintance, a man who suggested she hide from her husband and moved out with her child. She offered to help her find a new place. So she moved out and hid from her ex. Little by little, the man who claimed to help her started taking away her freedom. First it was her cell phone, that he would keep otherwise she would have been tempted to contact her ex. And then her wallet, because she was always at home, and she did not need it. At first, she did not realize what was happening, and his motivations seemed reasonable to her. She had found solace from the abuse of her ex, and she felt safe. But then, he started locking her in. As soon as she started saying that she wanted to leave, the abuse began.

> Then I was locked in the house, I was held captive. After that, when I said I wanted to go home, that I wanted to get out of here, the violence started. When I kept insisting anyway, about wanting to go out, one time he shaved all my hair. Well, the house was locked from the outside. Even if I unlocked the door from the inside, the door wouldn't move. He threw away all my things. Around that time, I found out I was pregnant [with his child] and said I wanted to go to the hospital, but he didn't even allow that, I couldn't even set foot outside the door, so I gave birth to this child at home. (Saito Yukiko, 26 February 2022, Osaka)

Saito-san got pregnant with her abuser's child, and she was forced to give birth all by herself, locked in the apartment. Fortunately, there were no complications for both her and the baby. She decided to wait for her youngest child to turn three before she tried to escape. So she waited, and after three more years locked inside her abuser's apartment, she ran. She went straight to the police and got admitted into a shelter, with her two children. As Kamawura-san, Saito-san already knew about

Article 772, and knew that her second child was born within 300 days after divorce. If she submitted the birth certificate the child would be registered in her abusive ex-husband's *koseki*, whom she was still hiding from. She has reason to believe that disclosing her address to him would have endangered her and her child, so she is hiding from both. In addition to the usual complication of the 300-day problem, she was also hiding from the biological father of the child. To solve her child's *mukoseki* status she needs the cooperation of either one of them, she cannot challenge the presumption of paternity by herself. The MOJ does allow victims of domestic violence to take legal action without having to face their abuser, but that is decided on a case-by-case basis. She would need to prove that she was abused. And the abuser would have to agree to hold the trail remotely. His veto would make it impossible. Under the current law, she has no way to give her child a *koseki* without involving either one of her abusers. The fact that the mother had once been married, and that Article 772 gives her ex-husband legal paternity, prevented her from simply registering the child in her own *koseki* as a single mother would. For this reason, her child is still *mukoseki*, with no hope of being registered in the foreseeable future.

Saito-san met Ido in 2010. She asked for her help, not to solve her child's *mukoseki* status, which she already knew was impossible, but to send the child to school. In Japan, families with children receive an admission notice (*shūgaku tsūchisho*) when their child is supposed to start school, indicating the name of the child and the local school to enrol in. The local government issues these notices based on the information in the residence register, *jūminhyō*, which a *mukoseki* child usually does not have. Although different from the *koseki*, in that both Japanese nationals and foreign residents can be registered in it, creating a *jūminhyō* requires a copy of one's *koseki* for Japanese people. Saito-san's child did not have a residence register, so they did not receive the admission notice. And without any document that proved her child's identity, Saito-san did not know if her child would be able to enrol. At her local office, no one was able to give her any answers, so she turned to the internet and found Ido's non-profit. Ido has been helping her ever since.

When I interviewed Saito-san, her second child had just taken the high-school entrance exam, a salient moment in a Japanese student's life. She agreed to tell me about her experience but only via videocall. She kept her mask on the whole time and was very careful not to disclose any personal information about her or her child, including their names, to make sure that no one could recognize them. She has been living in fear for the last twelve years. This is how she describes the obstacle she and her child have had to face.

> We didn't get a school admission notice. I had to use all my willpower, to explain what had happened. I was scared. Um, I don't want to tell anyone, but everywhere I go, [let's say] even though I can't,

> because of the situation, that I want my child to go to nursery school, or elementary school, or middle school. I have to talk about [our situation] every time. And, when the child grows up, for example, if the child wants to go to karaoke or bowling with friends, they'll ask for an ID, it's normal in Japan, [they'll ask] 'please show your ID'. Because it's taken for granted. […] It's getting more and more scary. to act. For example, let's say we went to a ski resort. We have the ski wear. So, we'll just rent the ski board. [I say] 'I want to rent it'. Then [they say] 'show me your ID'. [So we realize] 'Oh, we need it here too'. 'Oh, it's necessary here too'. So every time I go somewhere or do something, I wonder if I can. Well, when you board an airplane, even if it's in Japan, you have to bring your ID with you, so even if you have your ticket, we can't board if they ask us to show our ID. […] So, of course, I'm scared. For many things. So, the next big thing [we can't get] is, of course, the child's driver's license. It's the same with getting a job, getting married, and traveling abroad. (Saito Yukiko, 16 February, Osaka)

Without a *koseki* everything becomes either difficult or impossible. And not only big things, like getting a passport, enrolling in health insurance, getting married, vote, renting an apartment, or opening a bank account. But also small things like going to karaoke with friends, renting a pair of skis, stay at a hotel, or travel nationally. Going to school, for *mukoseki* children, is difficult but possible. There are several obstacles that might prevent parents of *mukoseki* children from even trying to enrol them, such as a general belief that unregistered children cannot go to school, sustained also by the admission notification system explained above, and fear of their children being bullied because of their situation. So, parents might not even try to find a way to send their children to school. But the disinformation of civil servants at the local offices is also a factor. Local offices are the first place that parents go to for information, and being sent away from the authorities without any answers understandably makes them think that it is impossible to send their children to school. In other words, public services such as education are accessible to *mukoseki* families on paper, but in reality, it is more complicated. Ido fills these gaps with her twenty years of experience fighting alongside mothers and *mukoseki* adults to have their fundamental rights granted. She has learned strategies that can be used to circumvent these obstacles, even though every case, every local office, every school might present with different problems. With her help Saito-san was able to enrol her child in elementary school, and then middle school. At the time of the interview she was anxiously waiting to know if a high school would allow the enrolment of a *mukoseki* child, because there is no guarantee. She needs to explain her situation every time and hope to be able to jump through all the hoops, just to have access to education.

Something that has made all the difference in their quality of life is being able to register the child in the residence register. In 2012 the Ministry of Internal Affairs and Communications (MIAC) issued an official notice to allow *mukoseki* individuals to register their residence in the *jūminhyō*. Such register is only provisional and will need to be renewed regularly by submitting a certificate of ongoing mediation (*keizoku shōmeisho*) as proof of the registrant's will to obtain *koseki* registration.

Despite all the shortcomings of this measure taken by the MIAC, getting a *jūminhyō*, albeit temporarily, makes all the difference in the quality of life of someone who is unregistered. For example, it allows them to enrol in the national health insurance and it makes enrolling in school easier. In 2020 Saito-san was able to obtain a *jūminhyō* for her child for the first time. She must renew it monthly, and there is no guarantee that they will continue to issue it, especially because one of the conditions on which it is granted is that «there is a high probability that the koseki will eventually be created through trial or mediation» (Ministry of Internal Affairs and Communications 2012). Which is not her case. But for the time being it has partially alleviated her burden. Now that the child has an ID and does not need to fear being asked to show it whenever they go out. Since her child was able to go to school as other children so far, and now has a *jūminhyō*, Saito-san describes their life as that of a normal teenager. But as the child grows up, new obstacles will arise.

> Right now, the people at the city hall, a lot of people, people like Ido, have helped me, and we're only just getting to the point [of being] like everyone else, but, uh, every time, I wonder if we can do something [or not]. Right now, my child can do almost the same things as everyone else, but how can I tell my child 'in the future, you won't be able to get a license, travel abroad, or get married'? [How can I tell them] 'you'll never be able to do that'? (Saito Yukiko, 16 February 2022, Osaka)

Under the current law it is impossible for Saito-san's to register her child. So they rely on the MIAC official notice and the temporary *jūminhyō* that it gives them, but realistically at some point the local ward will stop renewing it. As Ido-san explained:

> The condition [for *jūminhyō* registration] is that the hearing goes well. It's not just about the intention [to get a *koseki*], if it doesn't go well, then they will ask about what you're going to do next. Well, whether this person is a citizen or not, when there is no plan to get a *koseki*, if you create a resident register for them, it will be a mistake [in the system]. For the local government you might not be Japanese in the first place. Well, foreigners can have a *jūminhyō* too. The fundamental data[base] is the *koseki*, so they're making [the *jūminhyō*] on the premise that they will eventually get a *koseki*, so if the precondition isn't met, they can't create a *jūminhyō*, right? As a municipality. That's why they reach this decision [to make the *jūminhyō* temporary], I think. (Ido Masae, 19 November 2022, Tokyo)

The *jūminhyō* is a different registration system, but it is based on the *koseki*, except for foreigners who do not have it. Therefore, to register someone on the residence register permanently, if they cannot back it up with *koseki* registration, would result in a discrepancy. The MIAC official notice is merely a measure to allow *mukoseki* individuals to access public services, in the time it takes them from when they start legal action to when they obtain a *koseki*. It does not have the purpose of helping *mukoseki* people for as long as they are *mukoseki*. And some of them, as it will be for Saito-san's child, reach adult age without a *koseki*. Some are *mukoseki* for their entire life.

1.4 Ukai Mieko

One of the most recent cases that Ido-san took up is that of Ukai Mieko and her child. The mother reached out to Ido in November 2022, a couple of months after giving birth, because she was not getting the help, she needed from the local ward nor the Legal Affairs Bureau (*hōmukyoku*) in Okinawa, where she lives.

> Anna: The employees at the front office of the local authorities aren't knowledgeable about the *mukoseki* problem, are they?
>
> Masae: They aren't. That's why, that's why that girl from Okinawa has been struggling, you know? […] If they aren't knowledgeable, they will give incorrect information, such as '*mukoseki* people can't receive social security benefits'. They end up giving out false information. (Ido Masae, 19 November 2022, Tokyo)

As it is the case for many women who face the 300-day problem, Ukai-san was not given enough information from the local offices. They told her about the steps that she could take to have her child registered, but they were unable to explain in detail and could not answer practical questions like whether the child could be vaccinated or not. Once again, Ido had to fill in the gaps and intervene where the institutions failed. As Ido had explained to me during our first meeting in Tokyo, the mothers of *mukoseki* children whom she is currently assisting are, for various reason, keener on being interviewed. In Ukai-san case, she was still in such a shock at the legislation that created her child's *mukoseki* problem, that she wanted her story to be heard. That is why I was able to interview her on via Zoom call.

When Ukai-san and her husband decided to get a divorce, she could not afford to live on her own and had to continue living with the husband for several months before she could move out. They did not go through with the divorce while they were still living together. During that time, Ukai-san started a relationship with another man, and got pregnant. She was still legally married at the time of conception. The new partner was also married and when he knew about the pregnancy, he deserted her and the baby, and refused to take any responsibility. Only when she filed for divorce, she found out about Article 772 and the 300-day rule. She was fortunate, she said, to find a civil servant who already encountered one *mukoseki* case in the past at her local office. They also referred her to a lawyer who supposedly had some experiences of the 300-day problem. However, they could only give her basic information on the procedures that she could follow and could not answer all her questions. She had many worries regarding her child's first months, and their future, but they could not help her with that. She was worried and cried every day, until she found Ido's non-profit online and finally got some answers. She was astonished that Ido-san was so much more knowledgeable than both the lawyer and the local office's employee. Not only, she understood her situation on a

deeper level and was able to empathize with her. Ido recommended she file for a forced acknowledgement mediation against the biological father, but she decided to take the other route. Her ex-husband was willing to cooperate and agreed to file for confirmation of absence of parent-child relationship.

> He is not acting like 'I just don't want [the baby] to be in my *koseki*', he did the DNA test himself, he looked into it and found that if [we] can prove there is no blood tie, we can avoid the child being entered in his *koseki*. Thankfully he is being cooperative (Ukai Mieko, 18 November 2022, Tokyo).

At the time of the interview they were waiting for the results of the DNA test that he took, per request of the Family Court. Ido explained to her that using this procedure meant that there would remain a record on hers and her child's *koseki*. It will be recorded that so-and-son denied paternity and therefore the paternity presumption is not applied to the child. Despite all the time and effort put into denying the father-child relationship between with her ex-husband, his name will still be in their *koseki* after all. She is disappointed and angry about that, and she is also sorry for her ex-husband, who probably does not want to be recorded in the child's *koseki* in any way. Once proven that there is no father-child relationship, with a DNA test validated by a court of law, recording the fact that the father was originally presumed to the ex-husband, has no administrative purpose. There is no *need* to record this. What the recording does is merely stating that according to the law the father should have been the ex-husband, but it has been proven not be the case. It emphasizes the irregularity of the circumstances of conception. It reproduces the idea that these mother's actions deviated from the normative sexual script, because they had another man's child. This is the case both when, like Ukai-san, the child was conceived before divorce, and after.

> My husband, my ex-husband, is helping me, what he is doing for my child… The fact that his name and the phrase 'has denied acknowledgement' will be entered [in our *koseki*] is, well, I'm very unhappy about that. I wonder why there is a need to enter such minor details, like the name of my ex-husband. It's painful. (Ukai Mieko, 18 November 2022, Tokyo)

If, on the other hand, Ukai-san was to file a forced acknowledgement claim against the biological father, the ex-husband's name would not be recorded on the child's *koseki*. For this reason, Ido-san suggested she choose this route. But since the ex-husband had proven cooperative, while the biological father proved the opposite, Ukai-san decide for this procedure. After weeks of fear and uncertainty, she just wants to get it over with. Now that she has found Ido-san she is significantly under less stress, but she has suffered greatly.

> I know it's really the worst, but to give a *koseki* to my child, this child… […] I also thought that if it allowed [my child] to have a normal life like everyone else, as a person, to have social protection, to have a name, things like vaccination, worst case scenario my only choice would be to give the baby up for adoption. So I also researched adoption agencies, I was facing a very painful situation. […] I was lucky, [because] I was able to find Ido-san and to go to the government office. [But] for a moment,

> I did think about dying with this child. [I also asked myself if] giving the baby away would have been better. (Ukai Mieko, 18 November 2022, Tokyo)

Ukai-san was so desperate to give her child a *koseki* that she even contemplated giving up the baby. According to Koseki Law, if an abandoned child is found, the local office needs to be notified within twenty-four hours, by either the person who found them or the police ward where the finding was reported. And then the head of the ward must create a *koseki* for the child, giving them a name and a *honseki*, and record the presumed date of birth. The Koseki Law protects foundlings by creating a *koseki*, giving them an identity and Japanese nationality. However, the same does not apply to children whose mothers have strayed from social expectations, and have either had extra-marital relations, or got involved with a new partner soon after divorce. Even though Ukai-san wanted to raise her baby, the thought of her child paying the consequences for how she got pregnant filled her with such regret and shame, that she considered making such a great sacrifice to avoid it. Not only, she worried about the impact this would have on her ex-husband.

> In my case, I chose not to submit [the birth certificate] also because I didn't want to cause him any more trouble. Honestly, if I wanted, I could have just submitted it, because it was just about entering [the baby] in his *koseki*. But I couldn't do this [to him] after all. (Ukai Mieko, 18 November 2022, Tokyo)

In the ex-husband's case, having a 'stranger' in his *koseki* would not only have financial consequences such as having to pay for child support, but also emotional ones. Not only he would legally be the father of the child that the ex-wife had with someone else, but the *koseki* being a very important symbol representing the family, it would also mean accepting a 'stranger' in the family. Events recorded in the *koseki* have deep social and emotional meaning (see Chapter 3, paragraph 2). Entering someone's *koseki* (*nyūseki*), a metaphor that usually refers to getting married, means entering that person's family. So, even though the register is but a piece of paper, and all the people involved all are well aware that the ex-husband is not the father, the recording of this events has a great emotional impact on all parties. Now that she has met Ido Masae, and that she was able to start a confirmation of absence of parent-child relationship procedure, Ukai-san is hopeful that her child will eventually be registered.

1.5 Moral and immoral women

Ido, Kawamura, Saito, and Ukai were all affected by Article 772 and could not register their child due to the 300-day rule. But their cases are quite different. Ido-san had to go through four years of negotiations before she could divorce her husband. After she finally did, she got pregnant with Migoto. Kawamura-san's divorce was amicable, and she did not have to struggle as much as Ido did, but Ko's premature birth, unexpectedly happened within the 300 days even though he was conceived after

divorce. Both Ido and Kawamura had remarried before the babies were born, unlike Saito and Ukai. Saito-san was a victim of domestic violence and cannot initiate legal action to register her child without compromising her own and her child's safety. Ukai-san got pregnant before she divorced her husband and does not have the support of the biological father but, instead, is being helped by the ex-husband. Ido's child was born in 2003, Kawamura's in 2006, Saito's in 2010, and Ukai's in 2022. They live in different areas and refer to different local government offices. Except for Saito-san, they all used different strategies to give their child a *koseki*. Ido was the first to use the forced acknowledgement procedure. Kawamura was one of the first to use the medical certificate that proved the conception happened after divorce, after the 2007 official notice of the MOJ. And, finally, Ukai opted for the confirmation of absence of father-child relationship procedure. Therefore their accounts, though limited in number, represent many of the possible cases of the 300-day problem. Ukai's case is fundamentally different, and it will be useful to analyse why, before discussing Article 772 in more depth in the next paragraph. Cases like hers are never featured in the news and are not used as examples by activists and politicians. Because she was still married and living with her husband when she met her baby's father and got pregnant. Ido was able to speak out against Article 772 and the *mukoseki* problem because her situation was beyond reproach.

> As for why I was able to [speak out], I may have said it before, but in the *mukoseki* world I was the [kind of] person who would be the least criticized. Since I got pregnant after divorce, and the child was born after my [second] marriage. […] I have the right qualifications. Nobody can point their finger at me. I'm in a position where I can call out the unfairness of this law. It was the best position [for that]. So, if it was a pre-divorce pregnancy, I too would not be able to say that it's unfair with my head held high, and the reason is that if I had been accused of having an affair, well, I don't think I could have done it. But [in my case] it wasn't adultery. Um, this is Japan's weird concept of morality. Sure enough, I think I had the right leverage to openly say that doing this [kind of registration] even though I didn't have an affair, was an injustice, and that it was also troublesome for my ex-husband. And that's why I had some kind of sense of justice, and I felt like I had to speak out because other people couldn't. (Ido Masae, 19 November, Tokyo)

For the same reason Kawamura's case has often been featured on the news, and she was able to share her story. Because she had not done anything that could be considered morally reprehensible. She was considered a victim because the only reason her son was *mukoseki* was that she gave birth two months early. Nobody could accuse Ido or Kawamura of adultery because they got pregnant after divorce. According to Article 770 of the Civil Code, married couples have a legal obligation to be faithful to each other. The infidelity of a spouse is sanctioned as ground for divorce and gives the non-cheating spouse the right to be paid damages from both the cheating spouse and the cheating third party. Extra-marital relationships are not only considered reprehensible from a legal perspective, but there is also a strong social stigma against women, married or unmarried, who have extra-marital affairs (Ho 2015). Ido mentioned that her morality would have been questioned had she got pregnant

before divorce, and that she would not be able to speak out. One of the reasons why she feels compelled to be a spokesperson for the *mukoseki* problem is that she would not be characterized as immoral as Ukai-san might be. This is one of the reasons why there is no collective movement of women who are affected by the 300-day rule.

> Everyone [wants to] be anonymous because they think they will be looked down 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 there is no one who tries to come together or create some sort of group, let's say. Well, we have done, but [with people who] are against the *koseki* system, and that was too ideological so in the end it was difficult to get a lot of support at the time. (Ido Masae, 19 November 2022, Tokyo)

Another reason is that people facing the *mukoseki* problem are scattered throughout the entire country and would hardly be able to physically get together and create a community. According to Ido, this is something that sporadically happened, before the COVID-19 pandemic. In 2007 a group of mothers who were all going through mediation at the same time formed a network and kept in touch.

> Well, in 2007 […] 30 or so families applied for mediation all at once, for example. As a result [we created] a mothers' network, a family network, as well. I think we got together about twice a year. […] Well, we used to exchange emails and the like, but lately, it's kind of like, umm. They have already been registered, aren't they? There aren't many of them who [still] don't have a *koseki*. And then, for example Saito-san probably doesn't want to give her whereabouts or her contact information to people. In her case. Since it's such a tough situation. (Ido Masae, 19 November 2022, Tokyo)

Now there are not such occasions anymore. Ido works mostly alone, but she will not be able to carry out her advocacy work forever, and so she hopes to find someone who would replace her, but she has not found any candidates yet.

> The next generation, the younger generation, must find people who can raise their voices. I did it for 20 years, didn't I? [...] I've been doing it since my mid-30s, but as for the next 20 years, well, the people who were doing it before I started doing it are also 10 or 20 years older than me. They're gradually becoming all grandpas and grandmas. It's not like they've left a legacy for their generation either. Well, I didn't follow their footsteps directly. [For now] there's what I do, but I have to find people who are going to do it next. But it looks like there are no people willing to do *koseki* activism, in the younger generation. (Ido Masae, 19 November 2022, Tokyo)

In the next paragraph, through the stories of the former *mukoseki* people I met, I will go into further detail into why it is difficult for the younger generation to speak out and carry out activism.

2. Case studies: the children.

2.1 Kawamura Ko

Kawamura's son, Ko, was sixteen when I interviewed him. He was very soft-spoken but articulate and had strong feelings about the *mukoseki* issue. He grew up listening to his parents' stories and felt strongly for what they had to go though. Now that all is well, they laughed it off and remembered it

almost as a funny family story. During the interview Kawamura-san joked that the very first time that the three of them left the house together was to take a DNA test. Now that it is no longer painful, they can laugh about the absurdity if it all. Nevertheless, as he grew up, Ko started to understand more and reflect on the causes of the *mukoseki* issue.

> When I was in the second or third year of middle school I started thinking 'the *koseki* is wrong, not having a *koseki* is wrong, the 300-day problem is wrong'. I was told many times that it was absurd by my parents, so I realized yeah, it is absurd. Nevertheless, what's also wrong is that the government is not showing any signs of wanting to change it. (Kawamura Ko, 1 October 2022, Tokyo)

He also reflected on how his peers reacted when he talked about it.

> When I was in elementary school, I told some friends that I used to be *mukoseki* and they were like 'wow, it happens often now huh?' They just said, 'oh wow'. It seemed like nobody understood. […] Among the people I know [the reaction I get] stops at 'really, is that so?'. They're not very interested, well, they stop at 'oh, really?'. I never heard anyone tell me 'they should take this measure' or 'why don't they do this?'. From my friends it's just 'ah is that so?'. They have nothing [to say]. (Kawamura Ko, 1 October 2022, Tokyo)

He seemed comfortable talking about his past with friends but was frustrated by the disinterested reactions that he got. When he started to learn about politics and law, he started to be critical of it. His parents, and himself, had been victims of a flawed law, and this gave him a unique perspective that was not shared by his friends.

> [They] don't want to change their image of Japanese culture as beautiful, as something that we've been learning for centuries and so it's beautiful. That's why even if there is something wrong with it, they accept it […] I think maybe young people don't look at what is messed up. They only look at the good things. (Kawamura Ko, 1 October 2022, Tokyo)

2.2 Ido Migoto

Ido's son, Migoto was about to turn twenty when I interviewed him in his mother's office. He was a second-year student at Waseda University but had been attending classes in person only for a few months because of the pandemic. His mother has always been very vocal about her experience with the 300-day problem, and Migoto has appeared on TV several times with her when he was little. Ido-san remembers him when he was four of five years old, running away to his bedroom after seeing himself on TV. She thinks he did not like to be seen as this *kawaisō*, 'pitiful', child, as they would describe him. He has always known that he was *mukoseki* for a year after he was born, because his parents were always open about it with him, but he remembers realizing what it meant for the first time when he was about ten.

> When I would see something about the *mukoseki* problem on TV, or when I would see myself on TV, it happened often in the past […] well, when I'd hear that word in my daily life I would think 'that

> happened to me, it's not like that for other people'. That is when I realized that I was different, maybe. I was in fifth or sixth grade so I must have been around ten. (Ido Migoto, 19 November 2022, Tokyo)

Unlike Ko, he has never told anyone outside his family about this because he is not comfortable sharing the fact that he is or was, in some way, different from the norm.

> I don't think I ever told any of my friends, no, I haven't. Well, maybe, we could say that I have some kind of inferiority complex about it. […] Maybe I have a complex about the fact that I am different. Maybe I have this sort of subconscious complex. (Ido Migoto, 19 November 2022, Tokyo)

Migoto and Ko had very similar experiences and they both have mothers who have openly advocated for *mukoseki* rights, but they have different ways of coming to terms with something that happened to them when they were too young to remember it but that somehow made them different from their peers as soon as they were born.

2.3 A-san

A is a woman who has been *mukoseki* for 34 years. I heard her story at a conference that Ido and A held for the Tama branch of the National Bar Association on 24 January 2023. Some lawyers of the Tama branch created a consultation desk for people struggling with the *mukoseki* problem. They also created a *mukoseki* working group in which they share their experiences whenever they have a *mukoseki* case and need advice or want to share what they have found to be useful. Ido-san had invited A to speak to the lawyers because she wanted them to understand what are the real obstacles that *mukoseki* adults face daily. Differently from Ko and Migoto, the cause of A's *mukoseki* status was not Article 772, and she lived most of her life unregistered.

She is the sixth of seven children. Her older siblings were registered in their parent's *koseki*, but she and her younger sister were not. When she was born, her parents could not afford the hospital fee, and left without paying. Since they could not pay the hospital did not issue A's birth certificate. As Ido explained, at the time there were many families who were in the same situation, and hospitals held on to the child's birth certificate so that eventually the parents would have to come back and pay to get it. Usually they would do so when the child reached school age. Although A's parents were able to pay the hospital fees for her younger sister, they did not submit her birth certificate because, otherwise, the birth order of the children in the *koseki* would be wrong. The seventh child would be registered as the sixth, because A did not exist in paper. And A's mother thought that it was unfair to A that she was the only one of her siblings without a *koseki*. But eventually, when A's sister grew up, she was able to submit it herself and to be registered.

> Ido: There are many cases of *mukoseki* siblings. Apparently for the same reason, they say 'the [birth] order will be the opposite'. So, well, there are cases of animosity [among siblings] because, for

> example the younger sibling, like a younger sister [might ask] 'why is it that until my brother's situation isn't solved, I have to [suffer] the consequences?' (Tama branch conference, 24 January 2023, Tokyo)

A's mother wanted to go back to the hospital and get her birth certificate, she wanted to register her, but the father was against it. A remembers her mother trying to bring this up with the husband several times. But the father, who was violent, always shut her down.

> A: Another reason why I could not get a *koseki* was that even if my mother wanted to ask [for help] but it required money, so she was told no by my dad, or he would get violent, so she couldn't. (Tama branch conference, 24 January 2023, Tokyo)

Another reason why her mother did not come forward was that she believed she had committed a crime by not paying the hospital and not registering A, because when she went to information desk of the local ward scared her.

> Ido: After all, the local ward told her mother that she was a criminal and that she would be arrested. She didn't submit the birth certificate, so if the government knew about it, she thought that's what would have happened. They had seven children, what would become of them if the parents got arrested? She had that fear, so even if her mother kept thinking 'I'll do it today', or 'I'll do it tomorrow', in the end she couldn't bring herself to do it, and over thirty years went by like that. […] That government employee probably didn't really mean that, but his words had a great impact. (Tama branch conference, 24 January 2023, Tokyo)

So A spent all her childhood at home, playing and learning by herself, and then, when she was born, with her little sister. She would go out to the park to play with other children in the afternoons. They would ask her where she went to school and that is when she started lying so that nobody would find out that she was unregistered.

> A: My parents told me not to go outside during school hours. I spent my time watching TV and doing study drills, but in the afternoon when my mother gave me permission to go outside, I would go to the park or take a walk. While spending time there, I became friends with other children I met there who were the same age as me, and I would go to the Children's Centre (*jidōkan*), and I made some friends there. They would ask me 'so what school do you go to?'. I couldn't say that I didn't go [to school] so I lied [and said that] I had [just] moved there so I was [still] going to an elementary school far away. (Tama branch conference, 24 January 2023, Tokyo)

She longed for connection with other children, and so she looked for a basketball team in her area. She found one advertised on a magazine and she joined. She made friends and was able to experience some of the things that other children did. Unlike most children who grow up *mukoseki* and are mostly recluse, going out and meeting people allowed her to develop important social skills.

> Ido: She was very clever, well, she studied really hard on her own, and after all, she had a lively personality, so she was able to go out and join that basketball team. I think it's amazing. Many *mukoseki* people shut themselves in at home and are depressed. In a sense, yes, she had contact with the outside. (Tama branch conference, 24 January 2023, Tokyo)

The inability to go to school and the limited chances to socialize were not her only problems. She was not enrolled in the national health insurance because she did not exist on public records. She was never vaccinated and when she was ill, she would avoid going to the hospital if possible. When she was too unwell and could not get better on her own, her mother would take her to the hospital and pay the full fee. When she was older, she started using her older sister's health insurance card when she had an emergency. The age gap between them was small enough that she could pass for her. She had to lie about school, she had to lie about who she was when she needed medical attention, and she could not tell anyone outside her family about her situation. This made her feel guilty and ashamed. Eventually, when she was old enough, A left home. She had a falling out with her dad, whom she always had a troubled relationship with, and he sent her away. So she turned to her older siblings, who were already independent, for help. Her older sister rented an apartment in her own name because A could not, and she started living by herself. She needed to support herself, so she tried her best to find a job. She did not have many options.

> A: The hardest part was leaving home and finding a job. Well, even if I passed the interview, I was told to bring my ID or bring my bank account information. […] I had to give [the job] up because of that, and the kind of job that didn't require that, well, the conditions would be bad, and it would be a tough job, a night job. (Tama branch conference, 24 January 2023, Tokyo)

During that time she met her future husband. She could not bring herself to tell him that she was *mukoseki*. She was afraid that it would change how he felt about her and that that would cause them to break up. So when, one or two years into their relationship, they started discussing marriage, she kept evading questions and postponing a decision. Four years in, A got pregnant, and this finally pushed her to take matters into her own hands and start pursuing her *koseki* even without her parents' help. Because if she was still *mukoseki* when her child was born, the chances of the baby becoming *mukoseki* as well would have been very high. On paper she did not exist and her partner, who was not married to her, did not have any proof of paternity. So it would have been difficult to register the child, maybe it would not be possible at all. She did not want her baby to suffer as she did. So, without telling her partner, who was still unaware of her situation, she went asking for help at the Legal Bureau (*hōmukyoku*). As it often happens, she was told there was nothing they could do for her and suggested she go to her local office. When she went there, again she could not get any help.

> A: When I went to the legal bureau, they told me I had to go to the local office. When I went to the local office, they told me they couldn't do anything, they just told me I had to go to court. When I asked 'well, who can I talk to about this?' they said they didn't know. They said, 'why don't you just get your [birth] certificate from your mother?'. So I didn't know what else to do next. (Tama branch conference, 24 January 2023, Tokyo)

Desperate to find a solution for her baby's sake, she started looking for help elsewhere. This is when she found Ido and her non-profit. Since she was pregnant, the first thing that they did together, the day after they met, was going to the Health Centre (*hokenjo*) to ask for A's *boshi kenkō techō*, the Maternal and Child Health Handbook[50]. This is a handbook issued to all expectant mothers by Japanese municipalities, regardless of nationality, and it is used to record and monitor the mother's health conditions during pregnancy, childbirth, and childcare. It is a very important document because it is needed for all gynaecological appointments for the mother, and for the periodic health examinations of the child, including vaccinations. Since A had no documents, it was not issued for her, although according to a 2007 official notice of the Ministry of Health Labour and Welfare *mukoseki* women who are pregnant have the right to a *boshi techō*. As it often happens, even though there are many such official notices (*tsūtatsu*) that create exceptions to allow *mukoseki* individuals to access public services, employees of the local offices rarely know about them. This is because they are not laws but additional measures and get easily missed. This is exacerbated by the fact that staff are usually rotated every two or three years, as it has been mentioned, and so they simply lack the experience to deal with exceptional cases such as these. For *mukoseki* people and mothers of *mukoseki* children it is clearly very difficult to advocate for themselves in these situations because they do not have access to this information. The very people in the local administration who should grant them their rights, often fail to do so. So Ido-san came to the rescue and together they managed to get A a *boshi techō*. Then they started working towards A's *koseki*. In her case there was no need to go court, because her *mukoseki* status was not caused by Article 772. What she needed was to finally submit her birth certificate and she could get it from the hospital where she was born. But her mother gave birth at a private clinic, and the doctor's practice had since closed, and he had passed away. So there was no clinic anymore. But with Ido's help they found the doctor's wife. She had kept all her husband's files, including the clinic's documents. Fortunately, she found A's birth certificate even after all those years.

However, they realized that the baby would be born while she was still waiting for her *koseki*, so they had to find another way to properly register the child as soon as possible. There had been precedents of *mukoseki* individuals getting married, albeit with a somewhat different procedure from the usual

[50] According to the Maternal and Child Health Act, Article 15, pregnant women must notify the municipality of their pregnancy. Upon receipt of the notification, the municipality issues a Maternal and Child Health Handbook, or *boshi techō*. Such handbook can be issued regardless of nationality or age. Every time a pregnant woman or a nursing mother receives a medical examination, she must have the *boshi techō* with her, where all the necessary information will be recorded.

marriage registration[51]. The lawyers of the Tama branch were curious about how she did it because they could not imagine how it was possible. As Ido explained, getting married is a possibility for *mukoseki* people but there are many obstacles to overcome and there are many conditions they must fulfil before they can get married. In A's case, it was only possible because she could prove that it was just a matter of time before she got her *koseki*, and because her husband-to-be was Japanese. The fact that he was Japanese and, therefore, already had a *koseki* of his own, allowed the administration to create a new *koseki* for him, where they recorded the marriage. Normally, when two Japanese nationals get married, they will both exit their original *koseki*, usually their parents' *koseki*, and create a new one together. One of the spouses will be the head of the register, *hittōsha*, and the other one will be entered in the spouse column. But in A's case, since she did not have a *koseki* of her own she was not entered in the spouse column. Similarly to an international marriage between a Japanese and a foreigner, the marriage and A's name were recorded in the personal annotations' column (*jikōran*), but the spouse column remained blank. This is meant to prevent the non-Japanese spouse to become head of the register if the Japanese spouse dies, because *koseki* registration and Japanese nationality are closely linked.

Usually, when a Japanese couple gets married, they can decide who will be head of the register. It is an important decision because it dictates whose surname the couple will use, since all persons entered in the same *koseki* must share one surname. But A did not have a choice. Moreover, when a marriage certificate is submitted to the local authorities, marriage comes into effect immediately, but in A's case it had to be approved by the MOJ, so it was not authorized right away. This was cause for concern because if the baby was born before the marriage became effective, the child would be labelled as illegitimate (*hichakushutsu*). Fortunately, they were able to be legally married before A gave birth. Even though technically A did not enter her husband's *koseki* (*nyūseki suru*) yet, they were now legally married, and this strategy allowed them to register their child as their own and with the father's surname.

> A: In the personal annotations' column (*jikōran*) they write 'this person got married to so and so', they wrote [my name] there, but I didn't enter [the register]. Yes, so, that's why my son entered the family register before me […]
>
> Ido: This is how it works, you can only get married [first], and then when you get your *koseki* they will register you. So, since A's child was born after the marriage was approved, the order [of registration] was the child and then A. (Tama branch conference, 24 January 2023, Tokyo)

[51] In 2008 the MOJ authorized the marriage of a *mukoseki* woman with a Japanese man for the first time. As in A's case, the *mukoseki* spouse was expecting, and the MOJ allowed her to get married to the father of the child to avoid her child becoming *mukoseki* as well (Mainichi 2008:168).

Only after A's birth certificate was accepted and she was finally registered in her parents' *koseki*, she was then officially entered in her husband's *koseki* in the spouse column. In 2016, after 34 years of being *mukoseki* A's existence was finally acknowledged by the State.

But this was not the end of her struggle. She wanted to finally get an education, however, the fact that she never went to school and never graduated elementary school posed a problem. Fortunately, in 2016, the same year that A got her *koseki*, the National Diet was discussing the *mukoseki* problem and Ido managed to have A speak during one of the Diet's sessions.

> Ido: In 2015 or 2016 they were discussing the *mukoseki* problem at the National Diet and [A] gave a speech as well. Along with some other *mukoseki* people. […] An employee of the Ministry of Education, I was sitting right there, […], got very angry at the State for doing nothing until now, that person got very, very angry. And then, when A got her *koseki*, and another woman about her age, 33 or 34 years old, got her *koseki* as well, and the staff at the Ministry of Education issued an official notice that allowed [them] to enrol directly in middle school […]. And A and another woman entered middle school in their hometowns, A attended for six months. (Tama branch conference, 24 January 2023, Tokyo)

Before the official notice, cases like that of A were not really taken into consideration and schools were not prepared to have adults as students. But thankfully, A was able to go to middle school, without having to graduate elementary school, and received private lessons from the teachers. A found it very difficult to focus, even though she wanted to study so much, because she had never gone to school and had never developed the necessary skills. But she was finally able to graduate. She had her *koseki*, and her *jūminhyō*, she was married to her partner, her son did not become *mukoseki*, and she graduated from middle school. Although on paper all her problems were over, reality was very different. She missed out on many life experiences, and this still affects her life in many ways. For example, it affects her parenting. At the time of the conference her son had just entered elementary school and she explained what her biggest worry was.

> A: My biggest worry now is parenting. I didn't experience living in society like normal people, I haven't done things like that, so, when problems related to that come up, I'm trying hard to understand how to give him advice, but it's difficult. (Tama branch conference, 24 January 2023, Tokyo)

Another way in which being *mukoseki* for most of her life impacted her is the shame of having to lie about herself for so long. Nobody apart from her family, and her husband whom she told soon after meeting Ido, know that she was *mukoseki*. She would not dare tell her friends, even if she finds it painful not to be honest with them.

> A: Even now I still can't tell this to my friends or the people around me, well, my husband says I should talk more [about it]. He says, 'isn't it better to get it all out, everything that has been piling up so far?'. But it's very difficult, and I still haven't been able to. […] I can't bring myself to tell them that I've been lying. I think that our relationship would change, so I really can't tell them. (Tama branch conference, 24 January 2023, Tokyo)

It was very difficult for A to talk publicly about her life and her struggles. She could only say a few words without being choked up by tears, and in those moments, Ido would take over to allow her to catch her breath. A wanted to help the lawyers understand what it is like to live without a *koseki*, because she could not find any help from the institutions when she needed it, but this came at great cost for her. It forced her to think back to her father and his abuse, and to her mother who did not fight hard enough for her. It brought back the memories of all the experiences and the social connections that she could not have, all the obstacles she had to face, and the loneliness that came with the lies she had to tell.

3. The legitimacy presumption system, analysis of the law and the political discourse around the reform

Before continuing a discussion of the mukoseki issue, it is important to further analyse the law that causes it, Article 772 of the Japanese Civil Code. As explained in section 4 of Chapter 3, the first paragraph of this law assigns legal paternity to the husband of the mother, and the second one specifies when the first paragraph is applicable, that is from after 200 days after marriage up until 300 days after divorce. When this is not the case, the consequence of this law for women who have children with a different partner, before or soon after divorce, is having to register the ex as the father. A common question that arises is why not simply doing so, even if the father is someone else, when the alternative is to make your child *mukoseki*. As interviews with mothers of *mukoseki* children have demonstrated, it is not such a simple decision. Choosing to register your child this way is undesirable for several reasons. The biological father would not be legally recognized as the legal father, while the ex-partner will have paternity rights, and duties, towards the child, and the child will have his surname. One of the most relevant features of the *koseki* system is that all information, once entered, can never be deleted. So even if the child's guardians were to go to court and have the information corrected afterwards, what was recorded before would still be legible and traceable. But these are merely the practical, legal consequences of such registration. It also needs to be considered that one's *koseki* is synonymous of family and that the information entered in a family registered is not merely data but also a marker of someone's identity. Lastly, there is a long history of stigmatization of individuals and families whose *koseki* presents irregularities that continues to this day (see Chapter 3). If a mother was to decide to register her child as the law would require her to, there would be important consequences for all the parties involved.

Another question that might arise is why not simply use a DNA test to prove who the father is. To answer this, let us now look at the title of Article 772, *chakushutsu suitei*. For a long time after starting

this research I translated it as presumption of paternity, because what the law ultimately does is determining, *a priori*, who the father is. And what is disputed over between the law and the individual, when the *mukoseki* problem arises, is who the father is: the (ex-)husband or the new partner. It is not whether the child is legitimate or illegitimate, a label that has been eliminated from the *koseki* and the *jūminhyō* register because it was proved to be discriminatory. For these reasons I used to translate the term *chakushutsu suitei* as presumption of paternity, even though the literal translation is presumption of *legitimacy*. But when I interviewed activist Sakamoto, I started to see it under a different light.

> *Chakushutsu* means 'right', 'lawful', you know. 'Legitimate'. But we say legitimate child and illegitimate child, right? I think that, first, we need to change this word. If it is about establishing the parent-child relationship than we can use 'father-child relationship', right? Mothers have the fact of childbirth, so there is no need to verify [the relationship]. As for fathers, I think every country has some system for presuming paternity. But in Japan it's a system that makes a presumption about legitimacy, isn't it? So in terms of who the father is, rather than who is the biological father, it presumes that the child is 'right', 'lawful'. [A child conceived in] legal marriage. (Sakamoto, 24 August 2022, Tokyo)

She makes an interesting point. According to her, Article 772 has nothing to do with biology. This law was written in 1898 when there were no scientific ways of verifying the biological father-child relationship, and therefore it established a legal one using legal marriage as the determining factor. If proof of the biological paternity was the issue at hand, then a DNA test would be enough evidence to overturn the presumption. Mothers could simply bring such proof of paternity to the local government office and have the *koseki* officials register the correct information. There would not be a need to go to court and have a judge *decide* whether Article 772 should be applied or not. But unfortunately it is not that simple. It is not about who has a genetic relationship to the child, who is the 'real' father according to the people concerned, even though in many cases of 300-day problem a DNA test is considered valid evidence to overturn the presumption by Family Courts. Mothers *can* prove the genetic relationship with a DNA test, but this proof must be validated by a Court of Law, where each case will be evaluated.

This might sound contradictory, even nonsensical. If we reflect on what the words 'legitimacy presumption' mean, we can understand the mechanism of the law, which is defining exactly when a child must be born to be considered legitimate. It is a matter of *when* the child was conceived, that determines with whom, from a legal point of view. This is what we see when we analyse what the law says *literally.* Of course, there is much more to Article 772 than just its wording and its literal meaning. There are the assumptions that it is based on, the history that produced it, the purpose of the law that remains implicit, and the meaning that the law takes when it is considered in the wider context of the Japanese Civil Code and Koseki Law. But starting from an understanding of the literal meaning

of the law helps us understand one of the reasons why this law remained unchanged since 1898 despite its problematic effects. It also explains, in part, how conservative politicians were able to justify this law, its 300-day rule, and its rigidity. Because if we do not consider the *mukoseki* problem, the law appears reasonable. It does not say that a DNA test cannot be proof of paternity. It also does not say that the husband, who is presumed to be the father, *is* the father. It merely says that he is presumed to be the father and that this makes him the father *legally*. And this is because the child was conceived in wedlock, and therefore it is the legal fact of marriage, and not DNA or biology, that makes him the father. Article 772 states what is considered a self-evident fact, or at least something that is highly likely and based on common sense, that husband and wife have sexual relationships while they are married. And, based on Article 770, husband and wife also have a duty to be faithful to each other. So, in its interactions with other laws that regulate marriage, and with its being rooted in what is considered common sense, Article 772 appears reasonable. It appears to merely state the obvious. Not only, it appears to be a desirable law because it prevents husbands from deserting all responsibilities towards their children. If we look at the *mukoseki* problem, we can see the problematic nature of Article 772. But, because this problem arises only when a woman had sexual relationships with another man during marriage, which is a violation of Article 770, or soon after divorce, we can see how easy it can be to blame it on the woman's actions instead of the law. To blame it on the individual instead of seeing it as a social issue.

The law states what is expected from married couples, what is socially acceptable, and what is the case for most married couples. So, only if a woman's behaviour deviates from what is socially acceptable, they will be negatively impacted by this law. Not only, their children will suffer the consequences of their actions. And this causes women to think that it is their fault and to experience a great deal of guilt.

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

Moreover, according to Koseki Law, parents have a duty to register their children and, technically, it is not impossible for mothers to register them. Like Ukai-san said, if she wanted, she could register her child. She chose not to, because doing so would have great consequences for her child, for herself, and for her ex-husband as well. But if she was willing to pay the price, she could. Mothers are put in

a situation where they must willingly decide not to register their child. Since it is their choice, it is easy to attribute the fault to them. This guilt that mothers are made to feel aggravates the *mukoseki* problem, because in most cases the only way that they can reach a solution is through court. They cannot bring proof of paternity or any other document to the local government and prove that Article 772 does not apply to the child, the decision needs to be reached through a lawsuit or a mediation. And because women feel *they* are to blame, they are less likely to pursue justice in court. As lawyer Minami explains, guilt is a great obstacle that makes it emotionally very difficult for women to decide to take legal action. Because to file a lawsuit, a plaintiff is usually motivated by the conviction that they have been wronged in some way. They will then be proven right or wrong, but to put in the required time, effort, and money one must feel that they have suffered a damage for reasons other than their own actions. And the only two routes that are available to mothers to prove that the child is not the (ex-)husband's require either suing the (ex-)husband or the biological father. Although mothers of *mukoseki* children have suffered a damage, they often blame it only themselves and find it difficult to put someone else in the position of defendant, and this prevents them from seeking legal help.

> 'Even though I'm to blame, I should file a lawsuit, I have to sue someone'. […] It's not how they imagine a situation in which you file a lawsuit. It doesn't match [with their idea]. When you file a lawsuit, you think 'I'm not at fault, I behaved correctly, I'm right, in my position'. You think [you have suffered] something difficult, or sad, or unfair. Say, you think you should have got more money. Well, when someone is dissatisfied and thinks 'it's that person's fault, that person didn't do what they should have' [they want to prove] to the person that mistreated them that they are wrong, that they have made a mistake, and that's the purpose of a lawsuit. Even though it's up to the judge to decide that you didn't do anything bad, [mothers] think it's disrespectful, impertinent 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 Kazuyuki, 17 October 2022, Osaka)

But as he tells his clients, it is not the mother's fault, it is the law that is to blame for not taking into consideration these cases, and for not providing the necessary infrastructures to grant children, and mothers, their rights.

> The law didn't take into consideration *mukoseki* cases. […] When the law was written, they couldn't imagine there would be this pattern. [Nevertheless] these cases happened. The law didn't prepare in advance for what to do in these cases, when they didn't consider this pattern. And now it has become a problem, it's a problem, so the law is to blame. (Minami Kazuyuki, 17 October 2022, Osaka)

In other words, according to lawyer Minami, the *mukoseki* problem is not to blame on the individual but is caused by a flawed legislation that does not allow mothers to carry out their registration duties.

According to Article 7 of the UN Convention of the Rights of the Child that Japan ratified in 1994, «the child shall be registered immediately after birth and shall have the right from birth to a name,

[and] the right to acquire a nationality». Despite the circumstances of their birth, *mukoseki* children have a right to be registered. Article 772 does not grant this right to *every* child, because it creates great obstacles for mothers who get pregnant in unexpected circumstances. By not allowing for more flexibility in the presumption of legitimacy, and by not taking effective action to solve the *mukoseki* problem for the last fifteen years, the MOJ, and by extension the Japanese State, is doing the opposite of what they claim Article 772 is meant for: protecting children.

Furthermore, Article 772 reveals a bias. It is women who face the 300-day problem. It is *only* women who face harsh consequences if they have extramarital relationships or if they get pregnant 'too soon' after divorce. And it is decided by law how soon is 'too soon'. They will be asked to either abide by the rules and register false information regarding the father of the child or go to court to prove that they did not conceive the child with the (ex-)husband. Men, on the other hand, will not face the same problem. When a married man has a child from an extra marital relationship, the child will not be *mukoseki*. The baby will be registered in the mother's *koseki*, if she is unmarried, and the father can acknowledge them despite being married to another woman. On the mother's *koseki* there will be mention of his relationship to the child. Although infidelity is against the law for both spouses, it is only when the wife has a child with another man that the *mukoseki* problem arises. The husband can have children from other women, regardless of his civil status, and not face these consequences. In other words, their sexual behaviour will never affect their child's registration. The wife, on the other hand, will have to explain her sexual behaviour in court. According to Article 24 of the Japanese Constitution «marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis» and «with regard to […] matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes», however, Article 772 has a very different impact on women and men. This law discriminates against women and, particularly, divorced, and separated women. As we will see in the next paragraph, the 2022 reform of the Civil Code, including Article 772, which was aimed at solving the *mukoseki* problem, does not eliminate this bias.

4. The 2022 reform of Article 772

There are many issues intertwining in the *mukoseki* problem and the political dispute over Article 772. The socio-cultural weight of consanguineal ties in parent-child relationships, normative notions of male and female sexuality, the social sanction of women who have extra-marital affairs and divorced women. As I will argue, however, these issues can be untangled, and these apparent

contradictions can be explained by the desire of Japan's most conservative policymakers to control women's bodies, their sexuality, and fertility. It will be useful to start by analysing the political discourse surrounding the reform of parent-child law, including Article 772 of the Civil Code, that I witnessed first-hand through participant observation.

On 1 February 2022 the MOJ published the first draft of the reform proposal regarding parent-child law (*oyako hō*). The draft had been written by a subcommittee of the Legislative Council (*hōsei shingi kai*), one of the councils of the MOJ, whose purpose is to investigate and deliberate on basic matters related to civil law, criminal law, and other legal affairs in response to inquiries from the Minister of Justice[52]. The Legislative Council has a general assembly and several subcommittees that serve specific purposes. Its members are appointed by the minister among academic experts. The subcommittee in question was the 'Civil Code (parent-child legislation) subcommittee' (*minpō oyako hōsei bukai*). Since the ruling party was the LDP, as it was when the 2007 reform was scrapped, the 2022 reform was also pushed for by the conservative LDP. The reform concerned several bodies of law, among which Article 772, and its main objectives are the elimination (*kaishō*) of the *mukoseki* problem and the prevention of child abuse[53]. It included two main changes concerning the legitimacy presumption system that were aimed at the solving the *mukoseki* problem. The first one is an addition to the 300-day rule. Although the rule itself is maintained unaltered, it is added that in the case of children born within 300 days after divorce or dissolution of marriage *but* after the mother has remarried, the presumption of paternity will apply to the current husband, and not the ex-husband. In other words, even though the child was conceived during the previous marriage, if the mother divorces and remarries before giving birth, then the most recent marriage will prevail regarding legitimacy. The child will be considered a legitimate child of the second marriage and the new husband will be the legal father. This is even though, according to the first paragraph of Article 772, the child is presumed to have been conceived during the first marriage, because in this case the determining factor is the time of birth and not the time of conception. It is a shift on which marriage determines the legitimacy of the child. In the words of Ido, much like in a game of cards, the new husband is the new 'winner'.

> When deciding the [legal] father, the ex-husband, how to say, if we explain the presumption [system] in terms of a game of cards it is as if he has the king, and the other person has, like, a ten or a four, and nobody can win against the king. But now [with the reform] they made it so that both marriages are

[52]At the time Furukawa Yoshihisa was Justice Minister, but by December 2022, when the reform was last discussed by the Committee on Judicial Affairs and officially approved, there had been three different Ministers of Justice overseeing the reform. After Furukawa, the title was appointed to Hanashi Yasuhiro, who then resigned after a scandal that concerned him, and then to Saito Ken.

[53] Text of the reform available here: https://www.moj.go.jp/MINJI/minji07_00315.html.

> like kings, and the second marriage takes precedence (Ido Masae and Yoneyama Ryuichi, 1 November 2022, Tokyo)

To allow women to remarry before a child, conceived in a previous marriage, is born, the remarriage prohibition period (*saikon kinshi kikan*) was finally abolished. The first paragraph of Article 733 of the Civil Code established the remarriage prohibition period for women, whose purpose was to prevent any ambiguity in the presumption of paternity after divorce. Since children born 300 days after divorce are considered children of the ex-husband but those born after 200 days of a second marriage are considered children of the second husband, a waiting period of 100 days for women before remarrying made sure that in those 300 days' time presumption of paternity was unambiguously assigned to the ex-husband. The waiting period used to be six months, or 180 days, but it was reduced to 100 days in 2016, because 100 days were enough to ensure the unambiguous application of the presumption. With this reform, the remarriage prohibition period is finally abolished. In the context of this reform, the aim of this addition to the 300-day rule is to allow women who remarry to register their children as children of their current husband, avoiding the ex-husband being presumed to be the father, and without having to go to court.

The second main change introduced by the reform is the extension of the right to deny paternity (*hinin ken*). Before the reform only fathers could initiate legal action to deny paternity of a child. This reform allows mothers of *mukoseki* children, and children themselves if past the age of majority, to initiate the denial of paternity procedure against the presumed father to verify and possibly deny paternity. Therefore, mothers of *mukoseki* children do not have to depend on their ex-husbands to initiate this procedure, they can do it themselves. The effectiveness, or lack thereof, of the changes introduced by this reform, will be discussed in the last paragraph of this section, following an account of the arguments of both the MOJ representatives, the authors of the reform, and the members of the National Diet that expressed criticism during the law-making process.

This process involved several stages. After the first draft of a new law, or a reform, is issued by a ministry, it is submitted to the Cabinet for an examination of the legal appropriateness of the draft. Then, the Cabinet submits the draft to the Diet, either the House of Representatives or the House of Councillors, to be examined by both. The leaders of the Houses refer the draft to the appropriate committee, in this case the Committee on Judicial Affairs (*hōmu iin kai*). The examination starts with an explanation of the draft and its purposes by the Minister in charge, followed by a discussion in the question-and-answer format (*shitsugi*) with the committee asking questions to the Minister or to the witnesses (*sankōnin*), who can be either public servants employed by the relevant ministries or experts on the matter that are convocated to inform the discussion. If the committee approves the draft,

deliberation continues at a plenary session of the House in question. Once the draft passes the plenary, it is sent to other House, where it will go through the same procedure.

4.1 The debate at the House of Representatives

When I was on the field in Tokyo, the drafted reform was about to be examined by the Diet. Activist Ido Masae was busy meeting members of the House of Representative and the House of Councillors in view of the upcoming discussion of the reform. Her aim was to inform the Diet members' comments and questions on the reform during the examination. She explained to me that most Diet members, though sympathetic to the cause, did not have enough knowledge on this issue to really grasp the impact that the legislation would have and whether it was effective. Because the real-life circumstances of *mukoseki* people and mothers of *mukoseki* children are so distant from that of a *koseki*-registered Japanese, as most people they lack understanding of the real struggles this minority faces. And Ido, with her twenty years of experience, could provide that and, hopefully, influence the discussion of the reform.

She first approached Akiyama Kenji, an important figure of the party that Ido belongs to, the Constitutional Democratic Party (CDP). He had just been elected in the House of Councillors in the elections held in July 2022. Ido was then requested to give a lecture to Akiyama and Fukushima Mizuho about the *mukoseki* problem and her thoughts on the effectiveness of the reform. Fukushima, member of the House of Councillors and leader of the Social Democratic Party (SDP), was also a member of the Committee on Judicial Affairs of the House of Councillors. The Committee would later examine the reform and Fukushima was preparing the questions she would pose to the MOJ. When I met Ido, in October 2022, she was also trying to approach members of the House of Representatives, but with little success.

As the main activist for *mukoseki* rights, she hoped to be summoned as a witness (*sankōnin*), at the Judicial Affairs Committee of the House of Representatives, the first house to examine the reform. However, she was not convocated at this point. Therefore, she could only attend the session as an auditor. The fact that she used to be a member of the House of Representatives gave her access to the sessions, but since she was not a currently appointed member, she did not have access to information such as schedules and agendas of the sessions. In other words, she did not know when the Committee was going to discuss the reform of Article 772. Fortunately, she was contacted by Suzuki Yosuke (CDP), member of the House of Representatives and part of the Committee on Judicial Affairs. Ido had not approached him, but Suzuki, who used to be a journalist as Ido was, knew about her and wanted her input while preparing his questions and comments. By coincidence, his secretary for

policy[54] was an old acquaintance of Ido's, Kato-san, who then shared with Ido the schedule of the session on the reform.

As Ido had promised me, she contacted me as soon as she knew about the session. If it was not for her, I would never be able to access the Committee on Judicial Affairs. Because non-members are allowed to audit the sessions only when invited by a member. Ido asked Suzuki to put me on his list of auditors so that I could attend. The next morning, on 8 November, I met Ido in front of the First Building of the House of Representatives, in the Nagata district. Kato-san was there to greet us and give me my invitation, a ticket that I had to present to security before entering the building. We thanked Kato-san and made our way through the security check that forced us to take a much longer path to the room where the Committee gathered. We could not access the room through the same path as the representatives, and the path was so long that here had to be security guards at every turn to guide us along the way. Ido put on the brooch that she was given when she was a member of the Diet, that signified she was a former member and gave her access to the Diet buildings without going through security. I, on the other hand, had to leave everything I had on me in a locker and was only allowed pen and paper, and I had to wear a yellow ribbon on the lapel of my jacket, to be easily identifiable. When we finally arrived, the room was surrounded by more security staff, who guided us to the seats reserved to auditors and told us we were not allowed to clap, say, or do anything that might express our reaction to the matters discussed.

The auditors' seats were on the side of the room, perpendicular to the members' seats, which allowed me to observe everything that was going on. Several representatives came up to Ido to greet her, especially those who belonged to the same party as her, and Ido did not miss the chance to talk to them about the *mukoseki* problem and the flaws of the reform. They kindly introduced themselves to me as well, giving me their card, as is customary in Japan in formal situations. I imagine I must have caused some curiosity as a Western foreigner in a Japanese government building. One of the members of the board of directors (*riji*) of the Committee casually approached me, as a Japanese *ojisan* (uncle) would in an informal situation, to ask me where I was from, then yelled 'buongiorno' and told me about his travels to Italy. The members of the Committee were thirty-five in total, with the number of members per faction determined by the number of seats in the House of Representatives. In the room, with walls were covered with big portraits of former Prime Ministers, all male, there were only

[54] A Diet member's policy secretary (*kokkai giin seisaku tantō hisho*) is a Japanese Diet member's secretary who mainly assists with policy planning and legislative activities. The abbreviation is policy secretary (*seisaku hisho*). It is one of the three public secretaries that members of the Houses can employ at government expense.

three women: Kamata Sayuri and Yoshida Harumi, both CDP members, and Motomura Nobuko, of the Communist Party.

The only item on the agenda of the day was the examination of the reform draft of the Civil Code and, since the Minister had already presented the draft and its purposes to the House of Representatives, the session would start with the witnesses' (*sankōnin*) statements, who would speak for fifteen minutes each about their expert opinion on the draft, and then continue with a question-and-answer session. This stage is meant to help representatives understand the legislation and its implications and solve any doubts they might have. After that, the witnesses would leave the room and the questions would be addressed to the MOJ representatives. The first witness was Omura Atsushi, professor of Civil Law at Gakushuin University and, most importantly, the chairman of the Legislative Council's subcommittee that wrote the draft. His role in writing the draft, for which he was chosen by the Justice Minister, struck me as a potential bias. Of course, he must have been partial to the proposal, and therefore his presence as witness, his statement, and his answers, would probably steer the direction of the debate in favour of the reform. But it did not seem to cause concerns for the Committee on Judicial Affairs. However, he did address the issue, by starting his speech on the premise that he was not there as the chairman of the subcommittee but as an academic, and that he would give his personal opinion. He then proceeded to explain the reform, its rationale, and the expected outcome. His words were carefully chosen, but at times hard to follow because of the preciseness required by the legal jargon, which made his sentences extremely long and convoluted. Right at the beginning he said something that caught my attention. He said he would mainly focus on «the revision of the establishment or confirmation of *real* parent-child relationship» (House of Representatives 2022:1). He used the word *jitsu*, which can be translated as 'true', 'real', or 'actual'. What Omura meant by *real* parent-child relationship, however, was not clear yet. And as we will see from his statement this word, *jitsu*, is a word that can be used very conveniently to mean different things in different contexts. He mentioned the more general establishment or confirmation of real parent-child relationship, and not the presumption of legitimacy, because the reform does not only modify Article 772, but also Article 786 which regulates the acknowledgement (*ninchi*) of children of unmarried parents. Then, he added that the reform gave great consideration to the child's standpoint (*tachiba*), while it also modernized the Civil Code. He went on to explain what would change in the presumption of legitimacy. First, he said, its scope is extended. He referred to the fact that, before the reform, children born soon after marriage, within 200 days, were considered to have been conceived before the marriage and therefore illegitimate by Article 772. The reform eliminated this part of the law. Omura said that they based this decision on the fact that registering children born soon after marriage as

legitimate (*chakushutsu*) was already done routinely by *koseki* offices based on the many judicial precedents (*hanrei*). He included in this first point the fact that in the case of a woman who got pregnant before divorce and who gave birth after remarrying the father of the child is presumed to be the new husband. Along with this change, the subcommittee of the Legislative Council decided to abolish the 100 days of remarriage prohibition for women, he said. And he commented that «as a result, we consider this a step towards the realization of gender equality» (House of Representatives 2022:2). So he presented this reform not only as a long-awaited modernization of the Civil Code, but also a step forward for women's rights. Although true for this specific part of the draft, as I will argue in the next chapter this is hardly true for the reform of Article 772. But to understand this it will be necessary to examine this part of the law-making process in its entirety. Going further Omura briefly explained about the extension of the right to deny paternity to mothers and children, and then touched on the fact that this reform also amends Article 786, which regulates the acknowledgement of children when the parents are unmarried and gives fathers the right to annul such acknowledgement (*ninchi mukō*). According to Omura the fact that there was no time limit for the annulment of acknowledgement risked making children's lives too unstable, and therefore it was established a limit of seven years. After explaining its contents, Omura summarized the reform this way:

> On the one hand, [the reform] provides a reasonable solution to overlapping presumptions of legitimacy and relaxes the too strictly limited appeal of denial of paternity, and on the other, by setting limits to the annulment of acknowledgement, we are trying to protect all children's father-child relationships in a well-balanced manner. (House of Representatives 2022:2)

And he concludes that,

> I am sure that the people concerned (*tōjisha*) will have various opinions, and there are also different views among practitioners and researchers. In order to come up with a better system under such circumstances, I believe that it is necessary to start with measures on which a majority of people can agree on and then move on to provisions on which there are conflicting opinions. (House of Representatives 2022:2)

Omura sounded confident that the measures included in this reform were the ones on which 'a majority of people' would agree. The fact that during the law-making process at no point did the members of the subcommittee consult with activists, *mukoseki* people, or families of *mukoseki* children made me think that his remarks merely held true when applied to the average member of the subcommittee: middle-aged and older Japanese men with a law degree and conservative views.

The second witness was Kubono Emiko, a Civil Law professor at Tohoku University, who was also part of the 'Civil Code (parent-child legislation) subcommittee'. She focused her statement on the part of the reform that impacted parental authority over minors, which does not concern the *mukoseki* problem. And the third and last witness was Kondo Hironori, a lawyer, and a member of the Human

Rights Protection Committee of the Japan Federation of Bar Associations (*Nichibenren*), and the only witness who was not a member of the drafting committee. He was the only one to criticize the reform. He commented on the addition of paragraph 3 to Article 3 of the Nationality Law, which also has to do with paternity and is part of this reform. Even though it does not directly relate to the *mukoseki* problem, this point will be interesting to examine, because it may cause certain individuals to lose their Japanese nationality and, therefore, lose their *koseki*. Kondo immediately said he was against the addition of the third paragraph, which enables retroactive and automatic loss of nationality when no biological relationship exists between a child born out of wedlock and the Japanese father who acknowledges the child, even if this results in statelessness, and with no time limit. In other words, an individual who has only one Japanese parent will lose their Japanese nationality if, at any point, the biological parent-child relationship is proven to be unsubstantiated. Children with only one Japanese parent, a Japanese father, could lose their Japanese nationality and their *koseki* at any point in life. If that was their only nationality, which should be according to Japanese law, they would become stateless. Kondo pointed out that this clearly contradicted the desire to secure children's stability that the reform expresses with the amendment of Article 786. For children with both Japanese parents, Article 786 establishes a limited time of seven years for fathers to annul acknowledgement if they so wish. But for the children of parents with different nationalities this is not the case. Their stability is not protected in the same way, and they risk losing their Japanese nationality. Kondo also argued that:

> The fact that the parent-child relationship did not actually exist between the father and the child does not occur only in the case of foreign children. The legitimacy presumption system and the acknowledgment system, which have also been revised this time, and these are systems that are built on the premise that it cannot be proven at the time of notification whether the child is the father's child biologically, in other words, it may not be the father's child. (House of Representatives 2022:6)

Kondo points out the different weight that is given to the biological father-child relationship when the mother is not Japanese. So, not only this additional paragraph expresses a difference in the willingness to protect children's stability when their nationality is in doubt, compared to children whose nationality is certain, but it also shows a contradiction in terms of the determining factors of the father-child relationship.

After Kondo's witness statement, representatives started asking questions to the experts. Although the item on the agenda was the reform of parent-child law in the Civil Code, of which one of the main objectives was to eliminate the *mukoseki* problem, there was little to no mention of the reform of Article 772 and the *mukoseki* problem in their questions. Only one of them, Suzuki Yoshinori of the Democratic Party for the People, briefly asked about the presumption of legitimacy and if the

witnesses thought it was necessary given the possibility to verify paternity with certainty though DNA testing, to which all answered that they do, without providing further explanations. It continued on the same trend when the questions-and-answers session with the witnesses ended. The first witnesses left the room and were replaced by several public servants of the different ministries concerned. Among them, the questions were directed especially to the Head of the Civil Affairs Bureau of the MOJ, Kaneko Osamu, and Justice Minister Hanashi Yasuhiro. Kaneko used a complicated terminology but spoke in a soft voice and often stumbled on his words, he seemed to get more and more agitated by the probing questions of the representatives. Despite his experience as a judge for the Tokyo High Court he did not seem to be comfortable in that position. While Justice Minister Hanashi, the politician, showed confidence and was calm in the face of criticism. He seemed to be unmoved by anything that happened in the room. To be fair to Kaneko, Hanashi was not the one in the crosshairs, because he was not directly involved in the writing of the draft. The questions and comments had been previously prepared and submitted to the Committee's Chairman, by the representatives who were critical of the reform. The dynamic of the session was very orderly. When it was their turn, the representatives were called to the stand from the chairman and were allowed a fixed amount of time. When they were about to run out of time, a clerk would quietly go up to them with a note, to let them know how much time they had left. The witnesses, on the other hand, had to go back and forth from their seat to the stand every time they answered a question. So, even though most questions were directed to Head of Civil Affairs Kaneko, he had to raise his hand, be announced by the chairman, go to the stand, go back to his seat, and repeat every time. He did a lot of walking that day. But soon there was a break for lunch, since the Q&A with the first witnesses had taken up most of the morning, and me and Ido were invited by Suzuki Yosuke to join him in his office while he quickly went over his questions for the following day with his team. In about fifteen minutes the meeting ended, so Ido and I left the office to visit the National Diet Building (*kokkai gijidō*) with Kato. As a sign of hospitality Ido had asked him to let us in and give us a short tour of the German-influenced three-storey building on Kasumigaseki Hill. After that we got a quick lunch in one of the many cafeterias in the building and had sushi while Ido explained what had happened during the morning. I was surprised and disappointed that had been no mention of the *mukoseki* problem, and Ido was as well. She explained that representatives were mostly concerned with the problems that the addition of paragraph 3 of Article 3 of the Nationality Law posed, and rightly so, but as a consequence the *mukoseki* problem was set aside. She believed the reason why they did not ask about the reform of Article 772 was that the reform of Nationality Law was easier to understand. Even the representatives with no legal background could easily understand the effect it would have. And, she added, there were very few members of the current Committee on Judicial Affairs with legal

background, which was unusual. We hurried back for the second part of the session. Again representatives mostly asked about the Nationality Law and there was no mention of the *mukoseki* problem. During the session, however, both Suzuki Yosuke and Terata Manabu (CDP), kept coming up to Ido and calling her outside to have her insight on the reform. Ido knew Terata, they belonged to the same party, and although he had not previously contacted her, when he saw her in the room he reached out. I was losing hope and thought that the *mukoseki* problem might not be discussed at all by the Committee on Judicial Affairs, but at the end of the session Terata, who was one of the directors (*riji*) of the committee, voiced his disappointment: even though the matter to be discussed was the reform of the Civil Code, most of the discussion was around Nationality Law. He invited the representatives to steer the debate in that direction the following day. The meeting was adjourned, and Ido and I were escorted out by security.

The next morning, after going through the tedious security check and walking the labyrinthic hallways, we were sitting on the auditors' bench once again. At this point there would only be questions to the MOJ, and most answers were given by Kaneko and Justice Minister Hanashi, as the day before. After Terata's warning of the day before, the discussion turned to the Civil Code and the presumption of legitimacy right from the start. Critiques of the reform were to be found across all parties. Tadokoro Yoshinori (LDP) was the first one to enquire about the reason why the 300-day rule was maintained despite being the main cause for the *mukoseki* problem. If a woman does not remarry after divorce, Tadokoro said, nothing changes in terms of the 300-day problem. He also asked what results they expected from this reform, and what was the percentage of mothers who have children within those 300-day who remarry so soon. As with most questions, it was Kaneko who took the stand to answer. As he would do over and over whenever a representative would ask why this rule was not scrapped, he listed two reasons.

> First, considering the general gestation period, if a child is born within 300 days from the date of dissolution of the marriage, there is a considerable possibility that the child was conceived during the marriage. However, in this country, under the system of divorce by agreement, it is not a requirement to live separately for a certain period prior to divorce. The first reason, or purpose, is that it is thought that there are a certain number of cases where [a woman] gets pregnant during marriage, divorces before the child is born, and gives birth after that. Secondly, for example, although it is conceivable to not uniformly presume all children born after […] rescission of marriage to be the children of the husband of the previous marriage, this way, even when it truly is the ex-husband's child, the child's legal father cannot be immediately secured without the acknowledgement (*ninchi*) of the ex-husband. There is a risk that the interests of the child will be harmed as a result of not being given a father. Since this can still be considered a valid concern in the present day, we have decided to maintain this 300-day presumption rule. (House of Representatives 2022:5-6)

Although Kaneko's bureaucratic language might sound complicated, the two purposes can be summarized as such: first, a child born within 300 days after divorce is likely to be the ex-husband's

child because couples are not required to separate before divorce; second, if the 300-day rule were to be scrapped, in the case the ex-husband really was the father, the child will not have a legal father unless he voluntarily acknowledges the child, and this might be at the expense of the child. Before going deeper into what the MOJ believes the 'advantage' of the child is and why, and the MOJ considers relevant that couples are not required to live separately before divorce, I will give an account of the discussion as it unfolded, because it will give a clearer framework to my analysis. Kaneko then avoided Tadokoro's question regarding the effect the MOJ expected from the reform and added that according to a survey of the MOJ of 2020, 35% of the mothers who have children within 300 days after divorce, remarry before giving birth. Tadokoro commented that continuing to apply the presumption of legitimacy to children of women who do not remarry means that the reform will only be helpful to a minority of women and will not do anything for more than sixty percent of *mukoseki* children. He then said that the MOJ should consider abandoning the current system, to allow a choice between 'legitimate child of the previous marriage' and 'illegitimate child', when submitting a birth certificate. This would create enough flexibility to register children in both possible scenarios, the one in which the ex is the biological father and the one in which he is not. Among his other questions and comments, Tadokoro raised another important issue. He commented that although the extension of the right to deny paternity to mothers and children is a positive change, it is doubtful whether it will help mothers who were abused by the ex-husbands and do not wish to face their abuser in court. Other than the emotional toll that it takes, they do not wish their abuser to know their address or other personal information. The procedure of denial of paternity requires the participation of the ex-husband at the trial, and so other procedures that do not involve the ex-partner are more suitable for victims of domestic violence. Tadokoro asked how the MOJ was going to help ease the burden of these women. Kaneko responded that safety measures have been added in May 2022, with the reform of Civil Procedure (*minji soshō hō*), to allow parties of a legal trial to request for hearings to be held via videocall or phone call when there are privacy concerns, and to allow for certain personal information such as domicile to remain secret. What he did not mention, however, is that for these options to be available, both parties need to be represented by a lawyer, and both parties must agree to the hearings being held remotely. Which clearly raises serious doubts regarding the effectiveness of this measure in cases of domestic violence.

Kusaka Masaki (Komeito) also enquired about mother's right to deny paternity, this time about how the MOJ was planning to let mothers of *mukoseki* children know about this possibility. Because 'grasping' (*haaku*) the *mukoseki* population is something that has proven very difficult to do for the Japanese government, that relies on local government offices (*shi ku chō son*) and regional Legal

Affairs Bureaus (*hōmu kyoku*) for the survey on the *mukoseki* problem (*jittai chōsa*). And around 80 percent of local offices do not provide any data in response to the survey (Sakurai 2016). This is of great concern since the right to deny paternity, for mothers, is a limited time offer: they must initiate legal action within one year of the child's birth or within one year from the promulgation of the reform. Kusaka asked the Minister himself. Hanashi's answer was not very convincing. He said that, as they do for the survey, the MOJ will rely on local offices to spread awareness of this possibility, and the MOJ will contact directly the *mukoseki* people and mothers of *mukoseki* children that were identified by the survey. Since the survey itself, as has been pointed out, is not very successful, it is doubtful that this method would be effective.

After Kusaka, it was Yoshida Harumi (CDP) who took the stand, the first female Representative to comment on the reform. She was also one of the few members of the Committee who had a legal background. Yoshida went further than Tadokoro and asked about the ways in which children benefit (*rieki*), according to the MOJ, from the presumption of legitimacy. This is what Kaneko responded.

> As for this rule, it establishes who is the father when a child is born, in other words [it decides] who is the father bearing child support responsibilities (*yōiku gimu*), and it is considered an advantageous rule for children. (House of Representatives 2022:17)

In this context 'the child's benefit' is defined merely in terms of financial support from a parent other than the mother, in the form of monthly child support payments and inheritance. Although, as Yoshida later points out, the financial benefit that a child would gain is not guaranteed, because, as she put it, «even if he pays at first, when a father changes jobs you can no longer trace him» (House of Representatives 2022:17). And data about child support in not encouraging. As she mentioned, in 2016 only 24 percent paid child support. As it will emerge from further questions and answers, this argument will be a *leit motiv* of the MOJ's defence of its reform. But the child's benefit (*rieki*) or the child's well-being (*fukushi*) are part of the arguments of both the authors and the critics of the reform, with very different meanings.

After Yoshida's questions, it was the turn of Suzuki Yosuke (CDP), our 'host' in the House of Representatives. The discussion got heated. Again, as Tadokoro and Yoshida before him, Suzuki asked why the 300-day rule was preserved in this reform and if the MOJ believes that there is a high probability that children born within the 300 days are biologically related (*ketsuen*) to the ex-husband. Kaneko tiredly repeated, word by word, exactly what he answered to Tadokoro, but added further explanation as to why it is relevant, for the MOJ, that couples do not have to separate before divorce.

> Having lived separately for a certain period prior to divorce is not a precondition for divorce, therefore it cannot be said absolutely that the basis of sexual relations between husband and wife as an

> opportunity for the conception of the child, born after divorce, has been lost. (House of Representatives 2022:23)

Kaneko's statement was based on the assumption that the mere fact of cohabitation is enough to suspect that the child was conceived with the ex-husband, and that the couple might have had sexual relations up until the very last day of marriage. And this, according to the MOJ, justifies presuming that all children born within 300 days after divorce are children of the ex-husband. When Suzuki responded that a wife and husband who are about to divorce are unlikely to be on good terms and to engage in sexual relations, Kaneko added that the MOJ does not have data regarding how many children born within 300 days after divorce are actually biologically related to the ex-husband, so they do not have concrete evidence, but that the fact that 52.8 percent of couples cohabitates up until one month prior to the divorce[55] is enough to assume that the presumption is not unfounded.

Suzuki continued his examination by confronting the MOJ with its own data: if, according to the survey on the *mukoseki* problem, 71 percent of *mukoseki* cases are caused by the necessity to elude the presumption of legitimacy, do they believe that the *mukoseki* problem will be solved with this reform? And he later added that «there are many women who do not want to remarry for the time being because of the trauma of divorce. […] Isn't there a risk of forcing a marriage that they don't really want?» (House of Representatives 2022:24). Kaneko, like a broken record, mentioned the survey that found that 35 percent of women remarry before the child is born, and that remarrying is made easier by the reform, that eliminated the 100 days of remarriage prohibition, and lastly that women who do not get married again have the right to deny paternity. And concluded, «of course, we do not think that all [cases] will be resolved by this, but we are expecting to resolve them to a considerable extent» (House of Representatives 2022:24). He finally admitted that the MOJ was aware that this reform will not offer a solution to all people struggling with the *mukoseki* problem, and, therefore, admitted that the reform is lacking. Suzuki's following question produced an interesting response. He asked whether it would be possible to avoid the presumption of legitimacy if the biological father was to voluntarily acknowledge the child.

> The presumption of legitimacy system presumes paternity based on the marital relationship. The purpose is to secure the child's status by establishing the father-child relationship as soon as the child is born, and *not* to verify how likely it is that the child is the husband's child, or [to confirm] the presence or absence of genetic ties with the father case by case. […] On the other hand, because voluntary acknowledgement is based in the acknowledger's declaration of intention, […] it means that the fact of acknowledgement alone does not make it more likely that the acknowledger is the child's [father]. (House of Representatives 2022:25)

[55] This data is draw from the 2020 Vital Statistics on Population survey (*jinkō dōtai tōkei*).

In Kaneko's answer we see an apparent contradiction. When it comes to Article 772 and the legitimacy presumption, the biological aspect of paternity is not considered relevant in the legislation. The fact that the husband might not be the biological father is not enough to challenge the presumption of legitimacy, unless it is proven in a court of law with a DNA test. Article 772 merely establishes legal paternity, irrespective of biological paternity. But when Kaneko explains about voluntary acknowledgement (*ninchi*), on the other hand, it is the opposite. The legal fact of acknowledgement is not enough, because it does not necessarily imply a biological tie. So in this case, the biological father-child relationship is considered the more relevant factor of the two. In other words, in the case of Article 772, law wins over biology, in case of voluntary acknowledgement, biology wins over law.

After Suzuki's followed two particularly impactful question-and-answer sessions, both by directors (*riji*) of the Committee, Kamata Sayuri and Terata Manabu (both CDP), during which both the Head of Civil Affairs and the Minister let some controversial statements slip. First, Kamata took the floor and decisively started her questions. At this point, the already quite tired Kaneko appeared weakened by the energetic critiques of the six representatives who had already spoken, his voice was becoming lower and lower, and his words were more and more uncertain. Kamata started with a comment critiquing the *koseki* system itself, something that no other representative had previously done. She mentioned the case of a young woman who went to request the issuance of her passport only to find out that, on her *koseki*, she was married to a stranger. Because of a mistake, she had been taken out of her parents' *koseki* and entered in a stranger's register, and now had this person's surname. What was shocking to her, and her family, was not only that such a mistake could happen, but also that that mistake was indelible. Even though the marriage was declared invalid by a court of law, once entered in a *koseki* register information can never be deleted. It will always remain on record. She added:

> Sure enough, the *koseki* is heavy, its administration and procedures might be a rather far away from us ordinary citizens, but in practice, when we face some event or incident, we realize just how heavy that weight is, and so when something is cancelled, it never disappears, […] instead it is crossed out. (House of Representatives 2022:30)

Kamata used the word *omoi*, that can be translated as 'heavy' or 'serious', when referring to the importance that the *koseki* has for Japanese citizens. The *koseki* has a weight to it, the information it records is dense in meaning, and its registrants have a profound emotional relationship to it. As many representatives had done before her, Kamata also asked why the MOJ did not eliminate the 300-day rule, despite many think that it would be the most effective amendment to solve the *mukoseki* problem. Bur her inquiry had more weight, because of her status of director (*riji*) of the Committee, and Kaneko elaborated further. After repeating that the reform will be effective in helping the 35.8 percent of

women who remarry within the 300 days, and adding that abolishing the 100 days remarriage prohibition law might increase the number of women who choose to remarry, he said,

> Regarding the abolishment of the 300 days rule, which means not presuming the ex-husband's paternity anymore, once we get rid of that, I think we must think of another rule to decide who the father is. While we do look at this from the point of view of the child's benefit, is it fair to let the mother decide […] whether the presumption should be applied to the ex-husband or not? Don't we also need to consider whether that is really [good] for the child and, also, what about the ex-husband's benefit? […] There may be mothers who don't want their child to be her ex-husband's child, but on the contrary, there are [ex-husbands] who want the child to be theirs. […] So, I still think the court is more suitable. (House of Representatives 2022:32-33)

In other words, Kaneko insisted that a rule is needed to determine legal paternity after divorce, because they cannot allow women to simply decide, for themselves and their child, if the presumption of paternity should be applied or not. Again, it is clear that here biology is not the main concern in determining legal paternity. In fact, he also said that there might be ex-husbands who want to be the legal father of the child, even though they are not the biological father. So, he said, the MOJ needs to consider not only the benefit of child, but also the benefit of the ex-husband. This is the first time that the MOJ has stated that by preserving the 300-day rule they are protecting ex-husbands' right over their ex-wives' children. And it is also the first time that they have explicitly said that they are not willing to allow a woman, who most likely *knows* who the biological father is, to decide who should be the legal father of her child. This allowed Kamata to call out the Chief of Civil Affairs and say that their first concern should be the benefit of the child. And what, she asked, is so wrong in letting a mother decide? Then she went on to ask whether it would not be possible to leave the father's column blank and register the child in an individual *koseki* (*tandoku koseki*), which is a type of *koseki* that is created for foundlings. Kaneko's answer was negative, because the very purpose of the *koseki* system is to register one's position in the family (*mibun kankei*). Again, Kamata insisted that if the MOJ really had the child's wellbeing at heart they should prioritize the child and consider the option of an individual *koseki*. She went on, and inquired about the right to deny paternity: is the MOJ aware that women might not register their child's birth *because* they are required to take legal action against their ex-husband? Kaneko insisted: «we can't just think of what benefits the mother» and adds «as long as there is a possibility that it is the child of the ex-husband, we have to secure the ex-husband's opportunity to claim that it is his child» (House of Representatives 2022:34). This does not seem a very reasonable justification, however, if we consider that, according to the reform, even when a woman remarries before giving birth, a case in which now the presumed father would be the new husband, the ex-husband has the right to challenge such presumption in court. His rights over what could be his biological child are still granted. So allowing mothers to decide whether the presumption should apply or not does not necessarily compromise the ex-husband's rights over the child, because

he is granted the right to challenge such choice in court. Lastly, the issue of cohabitation as determining factor in the presumption of paternity is brought up again, but this time in a different light, one that showed some inconsistency. Kamata asked if the MOJ was willing to make a new law to allow women who got pregnant before divorce, but after separation, to avoid going to court, something that is not currently allowed. Kaneko replied:

> I think that separation might be one kind of proof that sexual relations [between husband and wife] have ceased, but not undeniably, and it is surprisingly difficult to certify separation from an external and objective point of view. I think it would be quite difficult to decide [on the issue of paternity] at the *koseki* front office. (House of Representatives 2022:32-34)

Kaneko's words reveal a double standard. On one hand the MOJ considers cohabitation sufficient proof that the couple had sexual relations, on the other it does not consider separation enough to prove that the couple *did not*.

But the debate got even more heated with Terata Manabu's questions. To start his critique of the reform, Terata, who was Chief of directors (*hittō riji*), provocatively asked: «is it correct to say that the purpose and mission of the MOJ and the Head of the Bureau is to reduce the number of unregistered people to zero?» (House of Representatives 2022:37). To which Kaneko could only say yes. Then Terata went on to ask whether they think the reform will completely eliminate the problem. Again, Kaneko was forced to answer as Terata expected him to, admitting that the MOJ is aware that «part of the [reform] is inevitably based on the mother's initiative to bring a lawsuit, and if we cannot eliminate the situations in which these conditions are not met, I cannot deny that there will still be [people] who remain *mukoseki*» (House of Representatives 2022:37). As Kaneko had admitted before, the reform is only effective if mothers act as the MOJ expects them to, that is to say, if they sue for denial of paternity and face their husband in court, no matter the circumstances. Terata then kept asking his rhetorical questions, to expose the irrationality of the arguments of the MOJ: were they aware of what might make mothers hesitant to sue their ex-husbands? If they *were* aware, what did they think was better for a child, to be fatherless on the *koseki*, or to be unregistered? The answer that both the Chief of the Civil Affairs Bureau and the Justice Minister gave was that they could not answer, because it contradicted the foundations of the *koseki* system and called for individual registration. Which, Minister Hanashi said, was something that the MOJ is definitely not taking into consideration, as it is also unwilling to consider abolishing the presumption of legitimacy system. Before making his final point, Terata asked one last question: did the MOJ had any hard evidence, any statistics or proof, that children born within 300 days after divorce *are* children of the ex-husband? To which Kaneko could only repeat that couples who do not separate before divorce might have sexual relations, simply because they live together. So, this is what Terata concluded:

> Terata: You can't give us a good reason. You're just saying that there can be such cases or that such thing is assumed. […] If you look around, you can see that there are a lot of people who want to separate but can't. For economic reasons, women's wages are low[er]. […] Do you think that women are, generally, in a financial situation where they can separate if they want to, in general?
>
> Kaneko: I don't know if that is generally true or not.
>
> Terata: Then, if you can't even say that, don't you see that it does not make logical sense to presume [paternity] because if [a couple] lives together, then, it must be likely that they have conceived? […] Anyway, [you're saying] let's eliminate the *mukoseki* problem, [but] it's impossible with this reform, we know that, and what are the reasons? Well, sure enough, it's the fact that for people who have suffered domestic violence it's hard to initiate legal action. Fully aware of this, you've set up this [rule], the 300 days. […] If the guiding principle really is the benefit of the child, then you must keep that principle in mind. (House of Representatives 2022:39)

With his rhetorical questions, Terata wanted to make the point that there is no factual data backing up the 300-day rule, and that the MOJ does not have any justification for not eliminating it, especially when they set out to solve the *mukoseki* problem with this reform. In his comments we can see how both sides, the MOJ on one hand and the representatives that are critical of the reform on the other, base their arguments on 'the welfare of the child'. Therefore, superficially, it might seem that they start from this common ground. Going deeper, however, we realize how different the assumptions behind this notion are. The MOJ insisted that what is most beneficial for the child is for legal paternity to be established automatically at birth, when the mother is married, because this will be financially beneficial to the child in terms of child-support and inheritance. While the critics of the reform maintain that what is best for children is to be registered, even if that means that they will not have a legal father. These two different assumptions lead them to opposite conclusion and, as I will argue in the next chapter, although the MOJ maintains that the reform was written with the children's well-being in mind, its priorities are fundamentally different, and they concern the desire to keep under control women's sexuality and fertility through the institution of marriage.

Terata followed up with a request for the MOJ to consider issuing more official notices to fill the gaps of the proposed reform. Since another reform would take years, he used the official notice of 2007 as an example. It allowed women who give birth within 300 days after divorce to overturn the presumption of paternity if a doctor certified that conception happened post-divorce, avoiding court. Terata raised the issue of DNA testing as a tool to reverse the presumption directly at the local government offices, when submitting a birth certificate, without a lawsuit. DNA testing is already used to challenge Article 772, but it is used during court proceedings to inform the judge's decision. It is not considered sufficient outside of that context. So Terata asked whether it would be possible to allow mothers to use DNA testing, with the validation of a doctor or a lawyer, via an official notice of the Civil Affairs Bureau. Kaneko was the first to answer, followed by Minister Hanashi. The Chief

of Civil Affairs said that although DNA testing may be used in court, at the discretion of the judge, its generalized use would be 'difficult' (*muzukashii*).

> The problem with DNA testing […] is that in some cases, even if [a child] is conceived, and is born during marriage to a married couple, it might not be the [legal] father's child. In order to create a system, it is necessary to think on the premise of a certain *general* rule, so it is difficult for the administration to meddle with and regulate individual circumstances. We must be appropriately cautious when dealing with something personal like DNA testing, or, so to speak, family privacy itself. (House of Representatives 2022:40)

Kaneko's argument sounded weak, but he was adamant that not only the use of DNA testing could not be used to establish paternity as a general rule, something that Terata did not suggest, but also that it needed to be managed by courts even for children born 300 days after divorce. Nevertheless, Terata being the head *riji*, he invited the board of directors to discuss this further at a later point. After this, Minister Hanashi also gave his answer, revealing another layer in terms of the motivations behind Article 772 and the presumption of paternity.

> Unfaithfulness during marriage can be considered an illegal act under the current Civil Law. Therefore, we have the presumption of the 300 days because one is not at liberty of committing adultery during marriage. […] Since there is another article in the Civil Code that prohibits adultery, I think that within 300 days after divorcing it is reasonable to presume the child to be the legitimate child of the ex-husband, in case [the mother] has not remarried. (House of Representatives 2022:41-42)

When confronted with the fact that the *mukoseki* problem can be prevented by simply proving biological paternity with DNA test, Hanashi retorted that the 300-day rule is part of Article 772 because spouses have a duty to be faithful during marriage. And therefore, if a wife was faithful in marriage, and then gave birth within 300 days after divorce, she must have conceived the child with the ex-husband. But how does that answer Terata's enquiry regarding DNA testing? What Hanashi's words imply is that allowing a mother, who got pregnant with another man's child before divorce, to simply go to the local government office with a DNA test and register her child, would mean allowing her adultery to go unpunished. And allowing her to decide who the father is. The 300-day rule is there to prevent this. This seems to contradict what the Chief of Civil Affairs, and the Minister himself, had previously said: that Article 772 and its 300-day rule are there to protect children. How can these two different purposes of the presumption of paternity coexist when the price that women pay for adultery, or supposed adultery, is that their child becomes *mukoseki*? It is unfair to the child, but it is also unfair to the mother. Because she might be guilty of adultery, but what about husbands who are unfaithful? Married men can have children from other women without any of these consequences, their children can be registered in their mothers' *koseki*, and the men can acknowledge them, even if they are married or recently divorced. But Terata did not raise this argument, preferring to insist on children's rights, as all other representatives did, instead of women's rights. Another element of

Hanashi's answer that seems contradictory is that even though a woman who gets pregnant before divorce but challenges the presumption of legitimacy is presumed to have cheated on her husband, if she gets married again before the baby is born, then she does not suffer any of the consequences that unmarried, divorced mothers do. It appears that the prerogative of the MOJ is to preserve the role of marriage in determining legal paternity, being it the original marriage or the second one. What seems to be important for the lawmakers is that either the ex-husband or the current one is assigned legal paternity automatically. In both scenarios mothers are not allowed to go against the legitimacy presumption without legal action, and 'decide' who the father is. After Hanashi's controversial answer, Terata concluded his speech by reiterating that the reform is not enough and asking the Minister to promise that he will take further measures.

With Terata's critique, the session had reached its peak in pathos, and the representatives that followed made some additional points, with Motomura Nobuko making some especially good arguments, but it felt as if a conclusion had already been reached. The MOJ had been forced to admit that the reform was deficient and needed to be integrated with additional measures. As Ido told me, when I interviewed her ten days later, these two days were a turning point for the *mukoseki* problem.

> In the end, I've been working [for a reform] for twenty years, but finally with those two days, well, […] it wasn't possible to change the text of the reform itself, but nevertheless in many ways, in terms of the importance that was given to the [*mukoseki*] problem, these last twenty years were about forty percent. And the effort that was put in the last Q&A session [at the House of Representatives] was sixty percent. And, it would have been better if more was added when they drew up the reform. […] If I were in the LDP's place I would have changed more than half. But they didn't go that far. Well, they couldn't. […] [But] this is not the end, in the sense that it will go further. Well, I feel like this is a first step. (Ido Masae, 19 November 2022, Tokyo)

Ido sounded hopeful, even though she believed this reform was not good enough, she thought it was a sign that more measures would be taken in the near future. After the first proposed reform in 2007 that was unsuccessful, finally, after fifteen years, the *mukoseki* problem was on the Diet's agenda again. She explained her role in shaping the conversation during the Committee on Judicial Affairs. Even though Ido was in the side-lines, as she was not a member anymore, during the two sessions both Suzuki and especially Terata kept coming to her for advice on their questions and comments. As Ido said: «I [told him] that this, this, and this are the problematic things about the Civil Code, and to include them [in his comments] […] and Terata has a lot of influence, since he is the Chief Director» (Ido Masae, 19 November 2022, Tokyo). Although Ido had not been in contact with Terata regarding the reform previously, they knew each other, and he knew he could benefit from her input. After the two sessions, Ido helped me understand Terata's role, and her role, in shaping the debate around the reform.

> On the first day the Q&A was all on Nationality Law, right? Then, Terata [said] that was not supposed to be, and [he asked] why did it turn out this way when it was supposed to be about the reform of the Civil Code. Besides, […] they didn't call [enough] witnesses. Since they couldn't summon witnesses, they only summoned three even if it should be four. And the reason why everybody talked about the Nationality Law is because commenting on the Civil Code is very difficult, while Nationality Law is easy. […] Changing [the subject] was one of Terata's duties as director, as director of the Committee on Judicial Affairs, and as Chief Director of the opposition. (Ido Masae, 19 November 2022, Tokyo)

Not only, Terata's contribution to the second session clearly demonstrated that there is no valid reason behind the preservation of the 300-day rule, and he pointed out that the reform is not effective in eliminating the *mukoseki* problem. Ido was happy with how the debate went and glad that she could contribute, despite not being called as a witness. She also added that my participation, as a foreign researcher might have slightly influenced what she called the 'living creature' (*ikimono*) that is the Diet.

> Ido: The fact that an Italian was watching, well, Japan is very vulnerable to international pressure.
> Anna: Oh, really?
> Ido: Yes. You see, if it was a Japanese student who, like you, went there, I don't think it would have put pressure [on them], but seeing that an Italian has come, how to say, everybody was a little nervous. So I think it was really effective. […] Like, why is an Italian here? And on top of that you were listening very attentively, right? (Ido Masae, 19 November 2022, Tokyo)

I was very curious about what she thought of Justice Minister Hanashi's statement regarding adultery being illegal and its connection to Article 772, because Terata had not picked it up and he merely referred to it as a 'swamp' (*doronuma*) that the Minister had accidentally stepped into, meaning that it was a controversial thing to say, but also not taking it any further than that.

> I guess that's where his real intentions came out. And when Terata pointed out that 'oh, now you realized you said too much, uh?', he said something like that, right? You see, the Chief of Civil Affairs mentioned that the 300 days are there because of 'doctors say so', [because of] the duration of pregnancy, […], but Mr Hanashi didn't talk about that, [he said that] the 300 days are a deterrent for infidelity […] You see, he said explicitly that [the rule] is for women's infidelity. […] I think this statement really symbolizes what are the real intentions (*honne*) behind this law and [what is] pretence (*tatemae*). In this country when a man cheats, for example, he can become the father to the child that is born from [the affair]. If he acknowledges [the child], he can become the father, but if a woman cheats, first of all she has to apologize. Then, after apologizing and after getting [the ex-husband's] consent, then the [new] partner can be [the father], or the [presumption of] legitimacy is removed. […] [Hanashi] clearly said that the reason for having the 300-day rule in the first place is that if [a woman] gets pregnant during marriage, gets pregnant from another man, and then gives birth, there's this punishment. […] It's a shame that Mr Terata didn't insist on that a bit more. [He could have said] is the purpose of the 300 days to be a deterrent for infidelity?
>
> Anna: It's gender discrimination.
>
> Ido: Yes, it is. […] You see, after all, the main thing is to control women's behaviour, and not whether the presumption overlaps, or [whether] paternity overlaps, or who is the child's father. This is

> discriminatory in terms of conduct regulation, and there is [also] no need to consider a longer gestation period[56]. (Ido Masae, 19 November 2022, Tokyo)

As Ido said, from Hanashi's remarks it appears that although on the surface (*tatemae*) the concern of the lawmakers is the welfare of the child, the real purpose of the 300-day rule is to regulate women's sexual behaviour and punish them when they deviate from their role of faithful wives. This appeared to be the MOJ's real priority, even if it affects children born within 300 days after divorce negatively. I will analyse this further in the next chapter, but first I will look at the debate around the reform that was carried out in the House of Councillors.

4.2 The debate at the House of Councillors

At this point, the reform had undergone the final examination by the House of Representatives, through the Committee on Judicial Affairs, and it was supposed to be taken up by the House of Councillors shortly after. But the schedule was set back by several weeks because of the resignation of Justice Minister Hanashi. On 11 November, Hanashi was forced to resign after protests over a comment that was widely interpreted as not taking seriously his ministerial authority to approve the execution of death row inmates (The Japan Times 2022). On the same day Saito Ken was nominated as his successor. My return flight was on 8 December and my time in Japan was quickly running out. I feared I would not be able to make it to the meeting. But, fortunately, after some uncertainty, Ido let me know the Committee had been scheduled to convene for 6 December. She was invited to speak as *sankōnin*, witness, on the *mukoseki* problem. She finally had a chance to address the Diet directly and hopefully influence the decisions of the MOJ. The reform could not be changed at this stage and for her to participate as witness she had to be in favour of the reform. Or at least she had to say she was. But, by pointing out the shortcomings of the draft and opening the eyes of the Councillors to the effects it would have (or not have) for *mukoseki* people and their families, she could hope to compel the MOJ to follow up with additional measures. I could not miss out on the opportunity to hear her address the Committee, and so packing had to wait.

As for the previous time, a member of the Committee had to vouch for me and grant me an auditor's ticket (*bōchōken*) for me to audit the session. Ido asked this favour to Councillor Fukushima Mizuho, lawyer, and president of the SDP, who had been sympathetic to the cause since 2007 when the *mukoseki* issue was just starting to be discussed in the public sphere. As mentioned earlier in this chapter, Fukushima and Akiyama were the only members of the Diet who asked for Ido's expert

[56] Here Ido refers to the fact that 300 days is an arbitrary number that is longer than the average pregnancy duration of 280 days.

opinion on the draft. So, on the afternoon of 6 December I met Nabeno Satoru, legislative aide to Fukushima, in front of the Member's Office Building House of Councillors. I was rather nervous, because this time Ido was already inside and was busy getting ready, so I had to navigate the admission and security check, and find the way in the labyrinthic hallways, by myself. But Nabeno's friendly attitude eased some of the tension. He explained how to get to the meeting and even gave me a map, although the presence of the many security guards, who pointed me in the right direction at every turn, made it impossible for me to get lost. I left my belongings at security and arrived at my destination. The room's layout was very different than the one where the Committee of the House of Representatives met. The members and witnesses were sitting at an oval table, all facing each other, with the president of the Committee sitting at the centre of the section closer to the door. When I entered the room Ido was already sitting down and looked busy reviewing her speech. I sat down at the back, next to activist Sakamoto Yoko, and noticed that I recognized one of the other witnesses. It was Professor Ninomiya Shuhei, a legal scholar and an outspoken critic of the *koseki* system since the early 90s. I had talked to him over Zoom when I was still in Italy, and he had been sending me reading material ever since. I noticed that the members of the Committee of the House of Councillors were fewer than those in the House of Representatives. Including the chairman, the directors, and the regular members there were nineteen in total, of which seven were women. They had spent the morning interrogating the representatives of the MOJ, mainly the newly appointed Justice Minister Saito and Kaneko Osamu, Head of the Civil Affairs Bureau, regarding the reform and were preparing to hear the witnesses, while at the House of Representatives it was the other way around. Soon, the president started the meeting by very briefly introducing the witnesses. The first on the list was Kubota Atsumi, legal scholar, professor at Kobe University, and member of the subcommittee of the Legislative Council (*hōsei shingi kai*) that drafted the reform. As happened for the House of Representatives with Omura, again one of the authors of the draft was going to comment on it. Although legitimate, it was undoubtedly quite redundant since the morning was spent listening to MOJ representatives. Ido was scheduled to speak second, followed by Kaneko Mai, Chief Legal Associate at UNHCR Japan, and finally Ninomiya would give his statement.

Kubota prefaced his statement by emphasizing that he would be giving his personal opinion on the reform, as a legal scholar who was part of subcommittee of the Legislative Council. However, as he carried on it appeared quite clear that he had no criticism to offer. He divided his speech in three parts, each dealing with one element of the reform, namely legitimacy presumption, child acknowledgement system, and the right to discipline children. When defining the legitimacy presumption he used a particular phrasing. He said that the legitimacy presumption system is one of the basic systems for

regulating *real* parent-child relationships. Using the exact same words as Omura before him, he said *jitsu*, which can be translated as true, real, or actual. Again, this word choice was very interesting, because this system *presumes* who the child's father is and, as we have seen in the discussion of the reform the House of Representatives, one of the main issues of the debate was establishing what the *real*, or right, father-child relationship is. Whether it was one determined by a genetic tie or by the institution of marriage. By using this word both Kubota and Omura, who both contributed to the writing of the draft, completely disregarded this controversy. Kubota also gave an incomplete and rather inaccurate definition of the *mukoseki* issue. Which, he said, motivates the reform.

> Under the current system of legitimacy presumption, [in the case of] a wife who flees her husband for reasons such as domestic violence and, in those circumstances, conceives and gives birth to a child, it is not possible to deny the paternity relationship between the husband or ex-husband and the child. This has brought about the so-called 300-day problem, where a birth certificate is not submitted, and the child becomes *mukoseki*. (House of Councillors 2022:18)

In this definition, according to Kubota the *mukoseki* problem and the 300-day problem seem to be synonymous, while that is not the case. The *mukoseki* status of a child is not necessarily caused by the 300-day rule of Article 772, although it is in most cases (see Chapter 3, paragraph 4). For example, in cases of domestic violence it can happen that a woman flees her husband and has a child with someone else while in hiding and unable to get a divorce. In such cases, it is not the 300-day rule that prevents her from registering the child, but the first paragraph of Article 772, the one that states that all children born to a married woman are presumed children of the husband. Kubota starts his definition by using this example, that does not necessarily have anything to do with the 300 days, to identify the 300-day problem. He does not even mention divorce, the leading cause of the *mukoseki* problem. It is rather alarming that one of the authors of the draft had such a vague idea about what the problem they were trying to solve was. He then carried on explaining the two main points introduced by the reform for this purpose, namely the extension of the right to deny paternity to mothers and children, and the shift of the legitimacy presumption from the ex-husband to the new husband in case the mother has remarried before the child was born. Regarding the second point he added that «this, as an improvement of the legitimacy presumption system, is of great significance» (House of Councillors 2022:18). He then explained why the presumption system has not been altered for the children of women who do not remarry. He makes the example of German law that, differently from Japanese law, does not extend the presumption of legitimacy to children born after divorce. But, he explained, that is because divorce by agreement (*kyōgi rikon*), which has immediate effect if both spouses sign ad submit a notice of divorce, is not allowed in Germany. The couple is required to undergo a period of separation before the divorce comes into effect. While in Japan, «the extremely simple and easy system of divorce by agreement is in place» (House of Councillors 2022:18). In such

a legal framework, he concluded, if the 300-day rule was to be eliminated then, if it was necessary to establish a father-child relationship between a child and the ex-husband, one would have to undertake an acknowledgment procedure. In this scenario, if the ex-husband really was the father and was willing to acknowledge the child, the procedure would be smooth, but if he was not willing the process would be difficult and the burden on the shoulders of the parties involved would be heavy. It is interesting that the concern here is to not burden with a legal procedure 'the parties involved', who would be the mother and the child. Because mothers and children affected by the *mukoseki* problem carry that exact same burden. He did not mention whether this was his opinion or if that had been the collective reasoning of the subcommittee. But it reveals an arbitrary decision to see things from the perspective of the accepted social standard. In other words, as regards the so-called 'burden' of legal procedure, Kubota seems to be more concerned for legitimate children, conceived between the mother and her husband, and less so for illegitimate children. He wrapped up his comment on the part of the reform regarding the legitimacy presumption system by stressing once more that this was «an incredibly important reform» (House of Councillors 2022:19). And much in line with what the Head of Civil Affairs and the Justice Minister kept maintaining during the meeting at the House of Representatives, he mentioned the importance of «preserving the fundamental principle of the present system, [that] of the stabilization of the child's legal status», and of «striving towards the wellbeing […] of the child» (House of Councillors 2022:19). Like Kaneko and Minister Hanashi, Kubota used the phrase 'wellbeing of the child' in a vague, generic way and merely in legal terms. In other words, it seems like within the MOJ rhetoric the child's wellbeing can and should be achieved by securing their legal status, which in this case seems to indicate the legal father-child relationship. For the MOJ, deciding who the father is by default, immediately after birth, with an absolute rule, equals securing the child's wellbeing. This way of thinking of children's welfare is simplistic at best. So much so that it sounds hypocritical. Kubota then went on to comment on the rest of the reform.

After him, it was Ido's turn to speak. The way she described the *mukoseki* problem, clearly and concisely, was not from the perspective of the law or the institutions, like Kubota's was. It stemmed from her direct experience of this phenomenon, as a mother and as an advocate for other mothers and children. As she put it, children «become *mukoseki* because the real father and the father presumed by the legitimacy presumption system of the Civil Code do not coincide and a birth certificate cannot be submitted» (House of Councillors 2022:19). In this definition, Ido clearly stated that the main cause of the phenomenon is the gap between the law and reality, between legal fatherhood and biological fatherhood, and between what a family looks like on paper and how it actually is. Also, she uses the verb *dasezu*, the negative of the potential form of *dasu*, 'submit'. She said that parents

cannot submit a birth certificate, therefore denoting both a willingness and an impossibility to do so. While Kubota has used the passive *dasarezu*, 'is not submitted', which does not denote any of the above. She then emphasised her expertise by describing the work that she does with her non-profit – a 24/7 free emergency phone line, email consultations, coordination with local authorities, providing of information on legal procedures and cooperation with lawyers – and giving the numbers of the people she has helped over the years, namely over 3,000 *mukoseki* people and more than 12,000 people in total including their families. Before she commented on the reform, she took a few minutes to comment on the situation of the *mukoseki* problem, and the legal procedures available. She did not go into detail, there would not have been enough time, but she strongly stated that «not being able to register [someone] means that [their] fundamental needs cannot be met» (House of Councillors 2022:20). Nevertheless, the website of the MOJ says that a *mukoseki* person can obtain a residence register and a passport and can even get married. What they do not mention, she said, is that to get a residence register there are certain conditions and between 40 to 50 percent of *mukoseki* people do not get one. Without a residence register, one cannot obtain a passport. Same goes for getting married, not every *mukoseki* person wishing to get married actually can. Regarding legal proceedings she argued that forced acknowledgement, a procedure that does not involve the ex-husband, is twice more likely than the other available procedure to be dropped.

> Look at the rate of withdrawal of *ninchi*. Compared to other [procedures] it is twice as much. Why is that? Although the *ninchi* procedure, where the biological father is the counterparty, is technically possible, Family Courts themselves have been denying *ninchi* requests for many years, and these numbers show how widespread is the unfair practice of pressing people to withdraw *ninchi* procedures and to opt for the procedures that makes the ex-husband the counterparty [instead]. Both the people involved and the lawyers supporting them raised criticism, saying that when you are *mukoseki* you are infringed on the people's right to receive trial. Even if we can see that the Family Court is lacking an understanding of the *mukoseki* problem, I guess it can't be helped. The Ministry of Justice is aware of this, and although some improvements are currently being made, can you see how difficult it is to obtain a *koseki* for one's child, or for oneself, in such a harsh situation? (House of Councillors 2022:20)

Again, Ido was trying to open their eyes to the reality of the *mukoseki* problem, which is very different from how it appears on paper. And to show them that although some measures have been taken, they are far from perfect. She then went on to comment, point by point, on the reform in question. Firstly, she addressed the shift in legitimacy presumption, for the first marriage to the second, in case the mother remarried before the child was born. She aimed at showing how arbitrary and unreasonable it is to hang on so tightly on the legitimacy presumption system, to presume paternity based on marriage alone.

> If the child was born even one day before the second marriage, would it really be appropriate to [consider them] the child of the ex-husband? In both cases, the conception happened during the previous marriage. Is the date of notification of remarriage the criterion for breaking the presumption

> of legitimacy of the ex-husband, and are the likelihood and fairness [of the presumption] maintained? It feels inappropriate to decide who the father is based on whether the mother remarried or not to begin with. (House of Councillors 2022:20)

How can the legitimacy presumption system still make sense if it does not matter anymore whether the mother has conceived the child before or after divorce? By creating an exception for women who remarry, the basic principle of the legitimacy presumption system is undermined. Secondly, she commented on the extension of the right to deny paternity to mothers and children and immediately said it would have very limited effectiveness. That is because this procedure is not usually preferred by mothers, since it requires them to interact with the ex-husband. Furthermore, it results in the ex-husband's name being entered in the child's *koseki*, if only to state that he is not the child's father. This is a concern, as Ido later explained to me during an interview, not only because a strangers' name is recorded in one's *koseki*, but also because other people might see it.

> If you end up doing denial of legitimacy, the name of the ex-husband will be written on the *koseki*, and if that happens, for example in Migoto's *koseki*, [people would say] there's a stranger's name here, right? And even if it's been written there to say that he's not [the father], […] sooner or later the child is going to see that, and other people are going to see that, for example when he gets married, right? […] The Ministry of Justice might say that that's fair, and they can't fathom that this fair thing is creating something that puts the child in a disadvantageous situation. […] They still haven't understood this. (Ido Masae, 19 November 2022, Tokyo)

Although since 2008 *koseki* registered are protected by privacy laws, there are instances in which someone's *koseki* is read by others, and this is cause for concern. «Since mediations and trials for forced acknowledgment (*kyōsei ninchi*) became widely known, the number of cases of denial of parent-child relationship has decreased sharply» (House of Councillors 2022:20), Ido added. This trend clearly shows that women do not want to involve the ex-husbands and, therefore, makes the ineffectiveness of this measure apparent. Even though women will now have the possibility to initiate the procedure of denial of parent-child relationship themselves, without needing the ex-husband to do it, it will not change much if women do not want to pursue their child's *koseki* this way.

Thirdly, she addressed the possibility to request to attend the mediation or trial for denial of parent-child relationship remotely, without having to physically meet the ex-husband. This had been one of the points presented by the MOJ when asked how they would guarantee the safety of women who suffered the ex-husband's abuse. «In a sense», she said, «for us, the people directly involved, and for the lawyers, this is but an empty dream» (House of Councillors 2022:21). That is because, she explained, if one of the parties was to request online participation, both parties would have to agree to it. Which means that if the mother asked to attend online and the ex-husband refused to allow her to, she would have to attend the mediation or trial in person anyway. If this measure was supposed to protect women from abusive ex-husbands, then how comes it gives the ex-husband the power to

decide whether they should be granted protection or not? Lastly, Ido commented on the preservation of the 300-day rule in Article 772.

> Today, in the 21st century, it doesn't say anywhere, from medical books to maternal and child health handbooks (*boshi techō*), that a pregnancy is 300 days long. Despite this, we hear that one of the reasons for keeping this rule was that, according to the opinions of experts at the Legislative Council (*hōsei shingi kai*), gestation can be as long as 300 days for some women. [...] The preservation of the 300-day [rule] is concerning not only regarding the *mukoseki* problem. By setting an estimated period of gestation one month, and more, longer than the average backed by medical and scientific evidence, the State officially presumes the sexual partner of the divorced woman to be her ex-husband and is allowing the ex-husbands to have control over the sexuality [of their ex-wives] for a period of time after divorce (House of Councillors 2022:21).

Although it was not central to her argument, Ido included in her statement that the 300-day rule is not only problematic for children who are caught up in the *mukoseki* problem, but it also undermines women's sexual freedom by giving ex-husbands power over them even after divorce. She then mentioned the controversial statement by former Minister Hanashi at the House of Representatives. He said that the reason why the rule exists is because committing adultery is against the law. Therefore, she concluded, «the law could also be interpreted as an endorsement of discrimination against women» (House of Councillors 2022:21). In her closing remarks, she asked the MOJ to keep their promise of considering additional measures, since they themselves admitted that this reform is not enough. For example, she said, in Japanese law there already is, potentially, a way to register *mukoseki* children without going to court. Allowing children to be registered without a legal father, in the mother's *koseki*, or allowing the head of local governments to issue a *koseki* for the child, would be extremely beneficial. Before her fifteen minutes were up, she managed to add this.

> The suffering of *mukoseki* people does not end when they get a *koseki*. A new fight begins from there. The fact that they couldn't go to school, couldn't get a job, couldn't get married, didn't know who they were. Even after they get a *koseki*, the hardship of having been rejected by the State remains with them forever, leaving a heavy burden on their lives. (House of Councillors 2022:21)

Ido chose to focus her statement on the *mukoseki* problem and did not comment on the reform of the Nationality Law, nor on the matter of the right to discipline children. On the other hand, Kaneko Mai, Chief Legal Associate at UNHCR Japan, focused on Nationality Law. She did not mention the *mukoseki* problem if not to say that, although statelessness and the *mukoseki* problem are always discussed separately, they have in common the need to prove the father-child relationship. In both cases the mother-child relationship is not the one to be questioned. So, although in different ways, for both children who risk becoming stateless because of their Japanese father denying paternity, as made possible by the addition of Article 3 paragraph 3, and *mukoseki* children incorrectly presumed to be the ex-husband's child, the problem lies in the legal father-child relationship.

The last to speak was Ninomiya, who focused his statement on the discrimination of illegitimate children. He started by reading Article 7 of the UN Convention on the Rights of the Child, that states that all children, when they are born, have a right to be registered and to have a name and nationality. He added that 'children', in Japanese *jidō*, indicates both legitimate and illegitimate children. Then, he started his critique of the reform saying that the draft lacked three things. Firstly, he said, it lacked respect for the reality of consanguineal relationships (*ketsuen*). Measures should be taken to allow the parent-child relationship to be denied if the legal father is not the biological one, and the legal burden to do so should be reduced as much as possible. Secondly, according to him, the reform lacked respect for the lived reality of the parent-child relationship. He added that if, on the one hand, where there is no biological tie, it should be possible to deny paternity, on the other, if the father-child relationship has continued for a certain amount of time then the lived reality (*seikatsu jijitsu*) of the relationship should be prioritized. Here he was referring to paragraph 3 of Article 3 of the Nationality Law, while with the first point he was referring to Article 772. In other words, according to Ninomiya, the biological father-child relationship should be acknowledged and protected by law as such. But if, for a long time, two people have been living as father and child, and have been legally accepted as such, this relationship should also be acknowledged and protected even when it becomes apparent that there is no biogenetic tie. To put it simply, Ninomiya was describing a more flexible system for determining legal fatherhood, that is context-dependent, and that can conform to both the wishes of the parent and the child. And if the two principles seem contradictory, one need only think of how in contradiction with each other the two laws are. Article 772 shows a disregard for biological ties and the superiority of the legal relationship established by marriage in determining legal fatherhood, while the new paragraph 3 of Article 3 of the Nationality Law prioritizes the biological tie above everything else. Lastly, Ninomiya added that the reform was lacking also because it did not consider all children equal. Both principles, the respect for biological ties and the respect for the lived reality of the father-child relationship, should apply to both legitimate and illegitimate children. Considering the above, Ninomiya started listing the reform's problems. As Ido did, he critiqued the choice to only help women who remarry and pointed out, as had been done by others at the House of Representatives, that only a minority of women remarry soon after divorce and before giving birth. But he took his argument further and added that if here the time of birth has become the criterion for deciding legal paternity in marriage, instead of the time of conception, then it should be possible to allow divorced mothers who do *not* remarry to simply register the child as fatherless. This way, acknowledgement by the father would still be possible if desired, the legal burden for mothers would be lifted, and it would a step forward towards children's equality. He continued with the argument used by Representatives Suzuki before him, that couples that are about to divorce are unlikely to have sexual

relations right before divorce, making the 300-day rule superfluous. He then focused on a critique of Article 3 paragraph 3 of the Nationality Law and for that he used an interesting argument. He used this argument within his comment on the issue of nationality of children, but its basic reasoning necessarily applies to the *mukoseki* issue as well. As some Representatives did, he also used the idea of non-responsibility of children. That is, in both the *mukoseki* problem and the loss of nationality that the new addition to the Nationality Law will cause, children are suffering the consequences of their parents' actions. Children do not have responsibility if their parents are not married, if they are recently divorced, or are married but separated, as they do not have any fault if someone who is not their father acknowledged them as his. And he based this argument on the 2013 decision of the Grand Bench (*daihōtei*) of the Supreme Court. On 4 September 2013, the Supreme Court decided that the differential treatment of legitimate and illegitimate children in matters concerning inheritance is unconstitutional. The reason given was that it is unacceptable for a child to suffer the consequences of the parents' not being married, a matter that the child cannot choose or correct, and the child should be respected as an individual and his or her rights should be secured. Based on this important precedent, Ninomiya argued that the same logic should be applied here. When Ninomiya finished his statement, the question-and-answer session started. Here I will give an account of the questions and comments that concerned the *mukoseki* problem, and the witnesses' answers.

Kada Hiroyuki (LDP) was the first, and the only one of the ruling party, to speak. He mentioned that he first heard about the *mukoseki* problem and its connection with Article 772 from Ido when they were both members of the Hyogo Prefectural Assembly. He expressed his admiration for her continuous work for the cause and asked how she had seen the situation change between then and 2022. Ido recalled the first time she brought up the topic at the Prefectural Assembly in 2005, two years before newspaper Mainichi Shinbun made the *mukoseki* issue widely known. «There was heckling» she said, «a bout of vehement heckling in response, but some members including Kada strongly defended [my stance]» (House of Councillors 2022:25). She then described how the Mainichi Shinbun coverage of *mukoseki* stories compelled the MOJ to take measures, and this resulted in the official notices (*tsūtatsu*), like the one that allows *mukoseki* individuals to get a residence register (*jūminhyō*). But she pointed out that they were vastly ineffective because of the gap between central administration (*gyōsei*) and local governments (*jichitai*). Things have gotten better, she added, since she had a *mukoseki* child and was told by the city of Kobe that she could not give Migoto a residence register. While now children whose parents initiate legal action to create a *koseki* are given a temporary *jūminhyō*. She also mentioned the My Number card, an alternative registration

system introduced in 2012, that is now requested to employees and makes it even more difficult for *mukoseki* adults to work. She concluded that it has not been done enough.

After Kada, lawyer Fukushima Mizuho (SDP) took the floor. She clearly said, from the start, that she agrees with Ido and Ninomiya that the 300-day rule should be eliminated. Fukushima suggested to replace the rigid legitimacy presumption system with a flexible one that could allow the use of DNA testing to overturn the presumption, directly at the local office and without the need for legal action. Since it is possible to avoid a lawsuit if the mother has a doctor's certificate stating that the pregnancy started after divorce, she did not see any legal impediment for that, and she asked Ido's opinion.

> Ido: The 300-day rule itself is a very broad presumption, and it extends to children who should not be affected by it[57], and it is extremely difficult to refute it through judicial procedure, as I mentioned earlier. That's why, if the 300-day [rule] is to be maintained, I think it would be better if the mother could take the initiative without getting the ex-husband involved. (House of Councillors 2022:26)

She also said that in 2007 the Hayakawa-Oguchi reform draft already envisioned something similar. It stipulated that if two of three conditions were met, a mother could simply register the child at the local government office without going through court. The first condition was that the ex-husband does not acknowledge the baby as his child, the second was a written statement of the mother, if the intentions of the ex-husband could not be verified, and the third was a DNA test proving the genetic relationship to the father. But that draft was discarded before it was even submitted under the pressure of the then Justice Minister Nagase (see Chapter 3 paragraph 6).

Fukushima then asked about what happens when the child is finally registered through the procedure that can now, with the reform, be initiated by mothers and children. She referred to the denial of legitimacy and the confirmation of absence of parent-child relationship procedures. Ido answered that even if the procedures are successful, on the child's *koseki* there will be mention of the ex-husband. If one opts for either one of these procedures and is successful, on the *koseki* where the child is finally registered there will be mention of it and it will be specified that the child is *not* the ex-husband's son or daughter. And so the full name of the mother's ex-husband will always be on the child's *koseki* even after proving in a court of law that there is no legal or biological relationship between the two. Ido said that the reason the MOJ gave for this is the need to emphasize that the child is *not* the ex-husband's child. And she added that «when they do that the name of the ex-husband ends up in the child's *koseki* and therefore it's not a viable option, [because] nobody wants that» (House of Councillors 2022:27). Ido's statement did not need an explanation within the Japanese cultural

[57] Here she refers to children who were conceived after divorce but were still born less than 300 days after, therefore falling under the legitimacy presumption of the ex-husband.

context, but it might seem excessive or unreasonable to someone who has not experienced being a *koseki* registrant. I have argued before (see Chapter 3 paragraph 2), as other *koseki* scholars have done (Ninomiya 2004, 2014, Krogness 2008), that *koseki* registration is not merely an administrative act. Sharing a *koseki* is a powerful metaphor of family. It sanctions a bond between spouses, and among spouses and their children. But it is also a powerful reminder of one's descent, as all previous *koseki* registers are linked to one another and are all usually kept in the same location, determined by the ancestral residence (*honseki*). It is a powerful symbol. And we also must keep in mind that even though people might refer to 'the child's *koseki*', it is never only the child's *koseki*, but the family's *koseki*. It is either a *koseki* where the mother is *hittōsha*, head registrant, if she did not remarry or, if she did, where her new husband is *hittōsha*. So it is in this family's *koseki* that the name of the ex-husband's enters. And entering the *koseki* (*nyūseki suru*) is a phrase that means entering a family. In this case, the ex-husband's name is entered in the *jikōran*, the personal annotations' column, and is not listed as a relative. However, this is seen as greatly undesirable. Ido went as far as to say that nobody would want that.

Sasaki Sayaka (Komeito) started her question by saying that for people who are not knowledgeable about domestic violence, contacting an ex-husband to ask for his cooperation might seem a reasonable thing to ask of a mother. But that victims of domestic violence and the people who support them have a very different view of things. So, she asked Ido to explain in further detail what are the circumstances in which dealing with the (ex-)husband is difficult or impossible. Ido started by saying that if the second husband, or generally the biological father, is cooperative, it is possible to not have the ex-husband involved. And proceeded to give two examples from her experience of cases where the involvement of the ex-husband was very problematic. The first one was the case of a woman who suffered severe abuse from husband, who would not agree to a divorce. So the woman had to go through a mediation first, and then a lawsuit where it was proven that the husband was abusive, to finally divorce him. But then she got pregnant by a new partner and the baby was born within 300 days. And even though the divorce had taken a long time and the abuse had been proven in court, she had to take legal action and face her abuser in court yet again, to overturn the legitimacy presumption. The second case was that of a woman who had escaped her husband's abuse and entered a shelter. She had to give a detailed written account of the abuse to receive care there. But, since she gave birth at home and had no hospital-issued birth certificate, she was also asked to prove that she was the mother of the child. To do that, she was asked to provide a picture of her and the baby with the umbilical cord still attached. Ido mentioned that the mother had suffered the abuse of the ex-husband and that of the biological father of the child, so she was likely referring to Saito Yukiko (see this

chapter, paragraph 1.3). After such a traumatic experience, after escaping her abusers, she was not only asked to provide evidence of the abuse, but her own motherhood was put into question, and she had to prove that to the institutions as well. Not only that, but she would also be required to prove that the ex-husband is not the father, while paternity is automatically attributed to him.

> It's cruel to have mothers to go through all this. As Councillor Fukushima mentioned earlier, […] if the ex-husband claims that the child is his own, then the ex-husband should sue in the form of the 'existence of a parent-child relationship'. So, [...] if we don't change the fact that the burden of proof is all on the mother's shoulders, in the end, I don't think the *mukoseki* problem will ever change. (House of Councillors 2022:29)

Ido suggested what Fukushima had already done with her comments, that is, to allow women to register the children that would otherwise become *mukoseki*, by leaving the father column blank in the *koseki* or to declare the father 'undecided'. This way the ex-husbands can still sue to establish a parent-child relationship if they wish, and the *mukoseki* problem would cease to exist. After Sasaki, all the Councillors who stood up to ask their questions did not enquire about the *mukoseki* issue or the legitimacy presumption system, until the very last. Nihi Sohei, of the Japanese Communist Party, was the last to speak but the first to use some arguments that spoke to the inadequacy of the reform draft. He started by asking Kubota about the minutes of the subcommittee of the Legislative Council.

> If you take a look at the minutes of the Parent-Child Legal System Subcommittee, there was a lot of debate, but regarding children conceived after separation or after the marriage has broken down, regarding measures for allowing [mothers] to notify the birth at local *koseki* office without resorting to legal action, it was concluded that this will not be taken up as a reform item in the Subcommittee on Parent-Child Legal System, and the reasons for that, there are a few, but one of them reads as such. It would result in the wife submitting a [birth] certificate for an illegitimate child, without following court procedures and without [the husband] knowing of the child's birth, although the husband would generally be presumed to be the father. (House of Councillors 2022:33)

As Nihi read, one of the reasons given by the subcommittee for not discussing the possibility of allowing women to register children without going to court, is that women would be able to register children born out of wedlock without the husband knowing about it, and without him becoming the legal father.

> To put it bluntly, what I think is: why would this be a bad thing? They're children born after a divorce, isn't it? Mothers, women, are the ones who know better than anyone else who the real father is, so I really cannot imagine what would be so wrong about accepting a birth certificate presented by a mother, and then issuing a *koseki.* (House of Councillors 2022:33)

Kubota's answer was very interesting. As a legal scholar he knew, of course, that there are countries where that is a possibility. In France, he explained, women can register a child and leave the father column blank. And not only for children born soon after divorce, as Nihi was suggesting, but also during marriage. Husbands can then take legal action to establish a father-child relationship if they

so wish. So he admitted that this would be a viable option and that it is true that, ultimately, mothers do know who the child's father is. However, he went on, that does not mean that women would always register truthful information.

> One problem in that regard [is that] even if the mother does know better than anyone who the father is, […] if they do not want to register someone as the father, even if they are, they can leave the [father] column blank. [...] even in the case where a father-child relationship could be established[58], the father-child relationship is denied, treated as non-existent, without involving the interested parties. (House of Councillors 2022:34)

In other words, women would be free to decide how they want to register the child and that, in Kubota's opinion, would be unfair to the husbands. He concluded by saying that the interested parties of the father-child relationship are the father and the child, and that therefore it would be unfair to allow to mother to decide who the legal father is without the husband's involvement. Upon hearing this, I could not help but read between the lines and find an underlying mistrust of women. And I found it very ironic that he should use this argument, that the father-child relationship should be established without the consent or the involvement of the husband. Because that is exactly what already happens with the legitimacy presumption system. It is an automatic presumption that the husband, or ex-husband, is the father, whether that is the reality or not, whether the husband wants it or not. And especially in the *mukoseki* problem, no ex-husbands want to be the legal father of a child that their ex-wife had with someone else.

Nihi then proceeded to ask Ido's opinion on the notion that it would be wrong to allow a mother to register a child, conceived after the marriage has fallen apart, without the (ex-)husband knowing about it. To give his question more emphasis, he mentioned the case of a *mukoseki* person whom he met with Ido in 2015, who finally obtained a *koseki* at the age of thirty-two. The mother had to wait for her ex-husband to die before she could register her child. Ido first explained what the legal procedure looks like in a case like that. When the presumed father is deceased, if the mother files for confirmation of absence of parent-child relationship, the counterpart is no longer the ex-husband but a public prosecutor. What they do is restore the deceased ex-husband's *koseki*, register the child's name in such *koseki* first, as his child, and then transfer them to the mother's *koseki* so they can share the same surname. «Is that really necessary?» she asked.

> I think it's very odd that people who don't even know that the child was born keep being presumed to be the fathers. So, for me, the rule is wrong in the first place, and if we don't make it possible [for women] to [register] without involving the ex-husband, the *mukoseki* problem can't be solved. This is

[58] It is left unclear, probably on purpose, if here he is talking about a scenario in which the husband is actually the biological father, or if he simply means that husband can be the legal father of the child even if he is not the biological father according to Article 772.

> really the key point, so although this reform does not go that far, I think that we should carry on the discussion. (House of Councillors 2022:34)

Once again, Ido urged the Councillors not to stop at this reform but to implement additional measures. Then Nihi turned to Ninomiya and asked him to expand on the historical origins of the concept of legitimacy (*chakushutsu*). Ninomiya explained that the word *chaku* has been in use since the eighth century in Japan, around when the Taiho Code[59] was enacted, and it indicated the rightful heir. He added that this notion was instrumental to the *ie* family structure[60]. So, Ninomiya continued, the concept of illegitimacy has become part of the Japanese collective consciousness since the *ie* system was established and, even though the *ie* has now been abolished, its patriarchal remnants survive and keep defining the 'legitimate' family as a married couple and their legitimate children. He concluded by saying that even though today these notions may be less stringent in comparison, children should not be defined by these labels anymore. Finally Nihi said he believed «that there is no doubt that the legitimacy presumption rule, under this notion of legitimacy, and Article 772 [that establishes] such powerful presumption that it can only be overturned by a complicated lawsuit in court, have created discrimination ad have afflicted many» (House of Councillors 2022:34). Although, prior to Nihi, others had expressed strong criticism on the draft and on the 300-day rule, he was the only Councillor to unequivocally state that Article 772 creates discrimination. He then asked Ninomiya one final question related to the *mukoseki* issue. He asked if it could be possible, given the current system based on time of conception (*kaitai shugi*), to overturn the legitimacy presumption, without resorting to a system based on the time of birth (*shusshō shugi*). He wondered if the legal system, technically, could allow mothers to register children without necessarily designating a legal father. And Ninomiya said that it could be possible because, as Kubota has also mentioned, there are examples of other countries where the presumption is based on the time of conception, but that still allow to easily overturn such presumption. However, Ninomiya insisted that a system based on the time of birth would be a better option and concluded with an interesting comment.

> But, after all, since in a system based on time if conception (*kaitaishugi*), in other words [a system] that presumes the child conceived by a wife during marriage to be the husband's child, there is this strong fixed notion of preserving sexual morality, monogamy, and [the notion of] the good wife, I believe that this should be changed with this reform. (House of Councillors 2022:34)

[59] The Taiho Code, or Ritsuryo Code, was enacted in 703, at the end of the Asuka period (592-710) and laid the foundations of the administrative system until the latter half of the nineteenth century.
[60] Within the ie system, children were divided into three categories. The children of the legal wife (*saishō*) were deemed legitimate (*chakushutsushi*), while the children of a legal concubine were called illegitimate (*shoshi*), and the children of other sexual partners were called love child or natural child (*shiseishi*) (White 2018). Legitimate children were the ones who inherited and continue the family line, while *shoshi* and *shiseishi* were treated poorly.

Nihi asked one last question to Kaneko Mai, regarding the reform of the Nationality Law, and then the session was over. I stood up to talk to Ido, but I realized there was already surrounded by a crowd of people waiting to talk to her. Sadly, I could not reach her before, a few moments later, a security guard came up to me and told me I had to leave the room at once. He explained that, as an auditor, as soon as the meeting was over, so was my right to be there. I had to leave without saying goodbye to Ido, whom I would not see again before my departure. But I was glad to see that her statement had sparked so much interest and that so many people wanted to follow up with her and discuss the issue further. And so my fieldwork was over. One day later I left Japan with many questions in my head, ones that I will attempt to answer in the next chapter. But first, to conclude this account of the days that I spent at the National Diet, I will summarize the arguments of the MOJ for not changing Article 772 significantly, and I will shed light on the contradictions within these arguments. Although this will not be new information to the reader, it will be useful to digest all this information by highlighting and organizing key elements of the debate, and it will be instrumental to the analysis that follows.

4.3 The motivations given by the MOJ for maintaining the 300-day rule

The Justice Minister and the Head of Civil Affairs consistently gave the same answers when asked why they were not willing to eliminate the 300-day rule. Despite the reform aimed at solving the *mukoseki* problem, when faced with the evidence that the reform will have a limited impact on the issue, they were forced to admit that they were aware of that. But they were adamant that they would not even consider eliminating the 300-day rule or creating easier ways, that did not involve court, to overturn the legitimacy presumption. The first motivation they gave was the need to establish the legal father-child relationship as soon as a child is born, to secure their status within the family, and within the *koseki*, to ultimately ensure their wellbeing. In these few words there are several implicit assumptions. The child's wellbeing, in the MOJ's argument, is assumed to be merely financial, namely in the form of child support and inheritance. A corollary to this may be the assumption that a mother's financial support alone would be insufficient. It is also assumed that a child born after divorce would benefit from being registered as the legitimate child of the mother's ex-husband, therefore being part of the ex-husband's *koseki.* Because, if we look at the situation of a child born 301 days or more after divorce, they will not fall under the legitimacy presumption and will be registered in the mother's *koseki*. And so their 'status within the family' would also be 'secured'. However, it would a be a different family, one where a single mother was the head of household, and the child would be labelled illegitimate. The assumption here seems to be that it is preferrable for the child to be in the ex-husband's *koseki* and to be legitimate. Another assumption is also that if paternity is not established automatically, fathers might not take the responsibility of acknowledging the child,

even if the child is theirs. A second motivation for keeping the 300 days was the likelihood of the presumption being correct. This was based on the medical consensus that a pregnancy lasts *at most* 300 days, and that separation is not a precondition for divorce, meaning that a couple might live together until the divorce, and indeed 52 percent do. Let us unpack the assumptions that underlie this motivation. The main one is that if a couple lives together, even though the relationship has fallen apart, their physical proximity alone is sufficient to deem intercourse likely. The other one is that said couple might conceived a child up until the very last day before divorce, because the 300 days start from the day of the divorce. One last assumption that needs to be pointed out is that when a couple does not separate before divorce, it is because they want to and not because they have no other choice. It appears this is considered to indicate that the relationship between the spouses is amicable, and it does not take into consideration the financial weight of separating, which is very likely a contributing factor. Lastly, and most importantly, when they use the word 'correct' regarding the legitimacy presumption, they do not necessarily mean that there is a biogenetic father-child relationship between the ex-husband and the child. It just means that it is 'correct' that the child was conceived before divorce. If it was conceived with the husband or with another man, seems to be of no concern. But it does remain quite vague, and it could also be interpreted as 'correct' meaning that it corresponds to a consanguineal tie. The third and last motivation that is given is that removing the 300 days would entail giving mothers the possibility to decide who the legal father is. This is deemed inadequate for two reasons. One is that ex-husbands might *want* to be the legal father of the child, regardless of their biological connection, and they would be denied a choice in the matter. And the other one it would allow women who cheated on their husbands in the last months of marriage to not suffer any consequences. This last reason is arguably the most controversial. Because it manifests a desire to protect the ex-husband's rights over the ex-wife's children, and a desire to use the 300-day rule to deter women from committing adultery, even at the detriment of the child. Children are undoubtedly the ones that suffer the harshest consequences of the *mukoseki* problem. And children are the ones that the MOJ claims to protect by maintaining the 300 days. However, this contrasts the MOJ's other priorities, namely safeguarding the ex-husbands right to legal paternity of children born in-wedlock and the punishment of a wife's infidelity. This also reveals a double standard, because there is no such punishment for husbands who have children with women other than their wives. If we also consider that the reform shifts the legitimacy presumption in case the woman remarries, from one marriage to the next, regardless of when the child was conceived, it appears that the MOJ's intention is that of safeguarding the institution of legal marriage as is defined by Japanese law. The motivations given by the MOJ for not introducing other significant changes such as allowing women to decide

who the father is even during marriage, or to use DNA test as proof of paternity without going through court, overlap with the above.

Let us now turn to an examination of the contradictions that are apparent in the MOJ's motivations, as emerged from the debate in the Diet. Firstly, they repeatedly said that the aim of the reform was to eliminate the *mukoseki* problem and that their priority in writing the draft was ensuring the wellbeing of children. However, these objectives are both in contrast with the MOJ's intent to protect the husband's right over the wife's children even after divorce, and with the intent to maintain a deterrent for women's adultery. If their utmost priority was to secure children's wellbeing, granting each child immediate registration after birth should be at the top of their agenda. And to do this, they would have to get rid of the 300-day rule because, as many Representatives have pointed out, children are far worse off without a *koseki* than without a legal father. Moreover, only a small percentage of Japanese fathers actually pay for child support[61]. Secondly, the MOJ claims that the legitimacy presumption is a desirable system because it is most likely that, in the case of children born within 300 days after divorce, the ex-husband is the father. However, they do not have any data to base this on. Instead, they base this on the fact that 52.8 percent of couples live together up until the last month of marriage, which they can do because separation is not a prerequisite for divorce. Not only this is a weak argument, because it is based on mere speculation, but they themselves have stated that, on the other hand, separation is not enough proof to overturn the legitimacy presumption. In other words, the mere fact of physical proximity of the couple is enough to assume that they had sexual relations, but their separation is not enough to assume that they did not. It appears all rather arbitrary. Thirdly, although they claim that the length of the 300-day period is based on medical science, most pregnancies last about 40 weeks (280 days), and it also needs to be considered that for a child born between 40 and 43 weeks after divorce to be the ex-husband's child, the child would have to be conceived on the very last days before the divorce. And so if their argument is that the ex-husband is *most* likely the father, it appears evident that that is hardly the case. Lastly, it is evident in the unwillingness of the MOJ to allow use of DNA testing to deny or prove paternity without going to court, that legal paternity sanctioned by marriage is superior to biological paternity. The marriage contract is more binding than any biogenetic connection. However, this is irreconcilable with the fact that DNA testing is indeed the ultimate proof used to deny the legitimacy presumption in court, and that this principle is not applied to all children. In fact, it is rather the opposite for children who have a Japanese father and a

[61] On 12 March 2021 the MOJ published the results of a survey on divorced couples found that, with regard to child-support payments, in 29.8 percent of cases there was no agreement or promise, in 16.8 percent of cases child support was paid properly, while in 18.9 percent of cases it was not paid at all, and in 14 percent of cases child support gradually stopped being paid (Mainichi 2021).

mother of other nationality who are not married. In the same reform, the amendment of the Nationality Law enables retroactive and automatic loss of nationality when no biological relationship exists between a child born out of wedlock and the Japanese father who acknowledges the child and with no time limit. So, in their case, the presence or absence of a biogenetic connection is crucial. If it is found that there is no consanguineal tie between the child and the Japanese father who acknowledged them, the child will lose their Japanese nationality, and therefore their *koseki*. The stability and wellbeing of these children is not protected in the same way as children of unmarried Japanese parents. So it appears that there is another double standard here. When a couple is married, legal paternity sanctioned by marriage takes precedence over consanguineal ties, but that is not the case for children of unmarried parents, especially if the mother is not Japanese. Because of the ambiguity with which they are used, the benefit of the child, separation/cohabitation, and marriage/DNA can and were used by both authors and critics of the draft to argue either for the maintaining or the scrapping of the 300-day rule.

4.4 Merits and demerits of the reform

After a discussion of the reform from the perspective of the authors and of its critics, it will be useful to evaluate the merits and demerits of the changes that have been introduced, in light of the debate around it and the account of *mukoseki* expert Ido Masae. There are three positive aspects of the reform. It abolishes the remarriage prohibition for women, prevents *mukoseki* cases when the mother remarries before giving birth, and it *might* have paved the way for additional, better measures. Shifting the legitimacy presumption to the second marriage was an easy transition, because not only it does not challenge the legitimacy presumption system, but it was also based in common practice. As Omura mentioned in his witness statement, they based this decision on the fact that registering children born within 200 days after marriage as legitimate was already done routinely by *koseki* offices. Although the first paragraph of Article 772 establishes that children who are born within the first 200 days of marriage are presumed to have been conceived before marriage and are illegitimate, this rule is not applied. Nowadays, all children born after marriage are registered as legitimate[62] despite Article 772. According to Ido (2017:60) this practice started in the 1940s and is well rooted in today's administrative practices. If we consider this, we find that there already were situations in which it was the time of birth, and not the time of conception, to decide the legitimacy presumption. What they did with the reform was merely apply the same customary rule to cases where the wife was recently divorced. Nevertheless, this measure is indeed beneficial. If, when Ido or Kawamura

[62] As mentioned earlier, the label 'legitimate' or 'illegitimate' is not entered in the *koseki* or in the residence register anymore, but it is still required information on a birth certificate.

had their sons, this was already a possibility, Migoto and Ko would not have become *mukoseki*. In cases like theirs, who remarried before their sons were born, the reform eliminates the possibility of paternity being assigned to the ex-husband. But that is not the case for most women. As the MOJ itself recognized, only a third of mothers would benefit from this measure. However, Omura went as far as saying that this reform represents a step towards gender equality, when not only no real change has been achieved, but the reform puts more pressure on women to rush into another marriage when they might not want to. It is ironic, to say the least, to call this a step towards gender equality. One last positive aspect of the reform, although it does not involve the draft itself so much as the debate that it created, is that members of the Diet have realized that this reform is far from enough.

> They didn't really understand that, or rather, I think they had this image that if this law passed as it was, there would be people who would be saved, and rather, that it would be a good thing. […] But I'm glad that I was able to show them concrete examples and say that this is not the case. I think it's great that, at the end, the feeling was that no one thought that the current reform was enough as it was. (Ido Masae, 28 December, Tokyo)

And the MOJ has been forced to admit that as well, and to promise that they will take into consideration integrating it with additional measures. After the Committee Ido was hopeful that «it's quite possible that the scope of the relief will be expanded, with notices from the Chief of the Civil Affairs Bureau, or the like» (Ido Masae, 28 December, Tokyo), but only time will tell if they follow through.

As for the demerits of the draft, it is apparent that it will have very limited effectiveness in most *mukoseki* cases. The most inadequate, or rather the most ineffective, of the changes that are introduced is the extension of the right to deny paternity to mothers and children. As Ido made clear in her statement at the Committee on Judicial Affairs, allowing mothers and children to sue the ex-husband for denial of paternity will not change the status quo because denial of paternity is the least desirable option for women. It still entails the involvement of the ex-husband, regardless of who starts the procedure, which is what most women want to avoid. What changes is merely the fact that mothers will not have to ask the ex-husband to take legal action, they will be able to do it themselves. But still an ex-husband can be uncooperative. Not to mention cases of marital abuse, in which it is of the utmost importance to provide women with solutions that do not require contact with the abuser. In conclusion, this reform does not make any significant changes for what concerns the *mukoseki* problem, because the legitimacy presumption remains inflexible, the 300-day rule keeps being applied to most cases, and the solutions offered are ineffective. As Omura himself said, they only took «measures on which a majority of people can agree on» (House of Representatives 2022:2). In

other words, they only took measures that did not alter the status quo. And they were able to do that by hiding their unwillingness to make significant changes behind a smokescreen of legal jargon.

Conclusions

In this thesis I have described the unique characteristics of the Japanese *koseki* system, the history that produced it, its functions, regulations, and problems, and I have described the historical, socio-cultural, legal, and administrative context that produces the *mukoseki* phenomenon in contemporary Japan, with a focus on the 300-day problem. After analysing how the *mukoseki* problem is represented by the media, and contrasting these portrayals with those authored by Ido, I presented the stories of my interlocutors, both mothers of *mukoseki* children and former *mukoseki*, which provided unique insight into this largely unknown phenomenon. I then illustrated how the political debate around the reform of Article 772 unfolded and gave an account of my experience of participant-observation at the Judicial Affairs Committee of the House of Representatives and the House of Councillors in November and December 2022, when the reform was undergoing its final stages. Along the way I have highlighted some recurrent elements, both in the experiences of mothers and former *mukoseki*, and in the arguments of the MOJ for maintaining the 300-day rule. Despite being a phenomenon limited to Japan and which affects a relatively small number of people, the *mukoseki* problem sheds light on the nation-state interest in controlling the maternal body, and mechanisms of structural gender inequality in the law, through a chastising notion of sexual morality and the notion of the ideal family, that are not unique to Japan. In this last chapter, I will now focus my analysis on the themes that emerged from the ethnographic data, building on, and filling the gaps of, the literature reviewed in Chapter 2. I will argue that although within the public and political debate the focus is on children and not on their mothers, the issue that is at the heart of the conservative politicians' arguments regards women's sexual freedom. Their interest is not so much protecting children, as they maintain, as it is about maintaining the 300-day rule to deter married women from having extra-marital affairs, and the safekeeping of the institution of legal marriage as the only legitimate locus of women's sexuality and reproduction, proving that Article 772 is a discriminatory law. This will inform my analysis of the role of consanguineal ties in establishing the father-child relationship vis-à-vis the law within the context of the 300-day problem. I will further argue that both the *koseki* and the legitimacy presumption of Article 772 (re)produce a patriarchal, nationalistic, cis-heteronormative ideology which defines the borders of nation, race, family, gender, and sex. And, in turn, produces and internalized gendered shame in mothers of *mukoseki* children, who blame themselves for their children's *mukoseki* status. I will then examine the reasons why there is no collective movement around the *mukoseki* problem and discuss the strategies of both Ido, to advocate for more effective measures, in light of the legacy of the motherhood protection (*bosei hogo*) debate, and mothers of *mukoseki* children, to register them, using Mahmood's (2001, 2005) definition of agency.

1. Presumption of legitimacy as a tool to control the maternal body

As emerged from the analysis of the MOJ's strenuous defence of Article 772, there are several inconsistencies and contradictions in the bureaucrats' arguments. The claim that the guiding principle of the reform is the benefit of the child sounds hypocritical when confronted with the ineffectiveness of the measures in solving, or even alleviating, the *mukoseki* problem. Even though children are the ones that are most affected by it, the reform does extremely little to help them. However, the MOJ's rhetoric is far from irrational. What it is, instead, is a strategic facade (*tatemae*) that allows them to preserve the differential treatment of women and men created by the legitimacy presumption system. The real intention (*honne*) of the MOJ is to keep penalising women who diverge from the social script for a wife and mother by having extra-marital relations. Even though not all women who are affected by the 300-day rule have had extra-marital affairs, since among them there are women who have, the MOJ is not willing to let go of the rule. Being straightforward about their true intention would conflict with two articles of the Japanese constitution. Article 14 declares that «all of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin», and Article 24 that «marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis» and «laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes». So, understandably, their strategy for justifying the preservation of the 300-day rule and the rigid application of the legitimacy presumption, was rendered more palatable by focusing on the need to secure children's status within the family and the financial support of the legal father. Only once did the Justice Minister let slip that «we have the presumption of the 300 days because one is not at liberty of committing adultery during marriage» (House of Representatives 2022:41-42). This also sheds some light on why, in their argument, the 'real father' is not necessarily one that is genetically connected to the child, although they never openly said that. They only kept insisting that the (ex-)husband is *likely* to be the father. And it explains why they insisted that mothers have DNA tests approved by a judge before they can overturn the presumption. Allowing mothers to simply decide who the legal father is, or prove who the biological father is, without the emotional toll and financial cost of legal proceedings seems to be unacceptable to Justice Minister Hanashi and Head of the Civil Affairs Bureau Kaneko. Even though, as Kubota admitted, mothers usually *know* who the father is, from the perspective of this conservative cabinet, it is simply not a matter of determining who the child was conceived with. It is a matter of assigning paternity to the husband and keeping women accountable for having 'affairs', or having sexual relations with another man after separation, or after the couple has decided to get divorced,

and even soon after divorce. It is ultimately about the safekeeping of the institution of legal marriage as the only legitimate locus of reproduction and the chastising of women's sexuality.

As we have seen, in Japanese Family Law married couples have a duty to be faithful to each other and adultery is grounds for divorce and compensation for both spouses. However, when it leads to pregnancy, men and women suffer very different consequences. As it emerges from the ethnographic data, Article 772 evidently discriminates and consequently penalizes women. There is a much heavier expectation for women to be faithful than for their husbands. In Japan, acceptable cultural notions of men's sexuality depict men as instinctual sexual beings who want and need more sex than women, and who do not associate sex with feelings of affection (Allison 1994, Ho 2012). In contemporary Japan men, especially white-collar *sarariiman*, are expected to engage in after-work leisure activities with their male co-workers, that might often take place in hostess bars, where they are entertained in a flirtatious way by women (see Chapter 2, paragraph 4). While women, and especially married women, are expected to not seek out, nor want, sex. A good mother is one that tends to her children and does not do anything just for herself, and sex is seen as a selfish act (Ho 2012). Not to mention that it is common practice for mothers and children to sleep in the same bed up until school age or longer, making it impossible for husband and wife to have the privacy, time, and space for intimacy (Adis-Tahan 2014). Women who cheat on their husbands are seen as selfish and morally deplorable, especially if they have children, whereas for men cheating is considered the expression of a 'naturally' high sex drive. Even though it is socially frowned upon even for men, men are not judged nearly as harshly as women.

Women's fertility is a matter in which modern nations-states are highly invested in. As I have mentioned in Chapter 2, paragraph 4, the control of women's fertility and the maternal body was essential to the formation of the modern Japanese nation-state. And since its inception, reproduction has not ceased to be a primary concern for the Japanese Government, and the State's attempts at controlling the maternal body continue to this day. And this is more relevant than ever in aging Japan, where the birth rate has been below the replacement level for decades, thus prompting the Japanese government to take action to raise the birth rate with questionable strategies such as Abe Shinzo's *Womenomics*, that aims at utilizing Japan's most underutilized resource, namely women, to solve both problems of the shrinking work force and declining birth rate. In other words, having women work more *and* have more babies to save Japan's economy. This interest of the state in such a personal matter is rather evident. But it is not limited to such practical concerns such as the birth rate. It is also about preserving the status quo in terms of gender roles and gender relationships within the home, as well as protecting a fixed notion of family. In Japan, as elsewhere, the main conservative argument

for the protection of supposedly traditional family values is that a disruption in the family system will cause a disruption of the entire society. It is a recurrent argument among Nippon Kaigi members, which include many leading right-wing politicians (Toyoda and Chapman 2019). Keeping the 300-day rule and the current legitimacy presumption alive, despite its poor outcome, means turning a blind eye to the reality of families that exist today and reproducing the ideal notion of the one 'right' family in the name of tradition.

Another contradictory element of the arguments of the MOJ in defending Article 772 is the importance they alternatively place on legal paternity and biological descent. They seem to use both definitions of paternity strategically to support their argument. They seem to consider paternity established by law more important than biological paternity, but they also say that the presumption is based on the high probability of the (ex-)husband being the biological father. And the fact that DNA testing, although insufficient in itself, in the context of legal mediation is the ultimate proof needed to overturn the legitimacy presumption, adds to the confusion. Again, the contradiction is but apparent. What is at the heart of the debate here is not really who the father is, it is about who the father *should* be. It is ultimately about control of the maternal body and the chastising of women's sexuality. Therefore, although the *mukoseki* phenomenon might seem to suggest that legal paternity has more socio-cultural weight than biological paternity, and it might seem to challenge the role of consanguineal ties in defining the parent-child relationship in contemporary Japan, ethnographic evidence shows that it is the opposite and that 'blood ties' remain an important factor in defining the father-child relationship. Ex-husbands do not wish their ex-wife's child to be registered as their own, and the fact that choosing to do so would cause them great inconvenience is one of the contributing factors to mothers' decision to delay registration. Even when ex-husbands prove to be uncooperative, it is not because they want to register the child as their own. In cases where the ex-husband is abusive, they might want to take advantage of the situation to keep abusing their ex-wives, but there is no evidence that they might want to be recognised as legal fathers of the children. Mothers and biological fathers of the children seek to establish a legal father-child relationship based on biogenetic ties. And within the political debate, the 300-day rule is criticized by members of the majority and the opposition alike. It seems that it is only the most conservative, and most powerful, of the LDP who have an interest in preserving the inflexibility of the legitimacy presumption and the 300-day rule. Both in 2007 and in 2022 the reform of Article 772 was drafted and pushed for by the LDP, a conservative party, although through two different law-making routes. Especially in 2007, it became clear that there was a divide within the LDP between the more conservative and powerful members, and the more progressive ones (see Chapter 3, paragraph 6). In the debate around the 2022 reform,

again some members of the LDP joined the opposition parties in criticizing the limitations of the proposed draft. There also have not been any indicators that the general population would be against more effective measures. Therefore, the only gatekeepers of the presumption of legitimacy seem to be the most conservative, and powerful, of the LDP.

In the legitimacy presumption system, which disregards the biological aspect of paternity, one might find an echo of the importance placed on succession and continuation of the modern *ie*. And many authors argue that it is the permanence of *ie* ideology in the *koseki* that causes, or rather reproduces, discrimination through the register. However, I believe that arguing that the *ie* lingers on in the *koseki* system today implies that the *ie* is *now* an anachronistic family model that does not suit the contemporary scenario, when actually it never could be, since it is an ideal family created ad hoc. Instead, what causes discrimination is the fact that the *koseki* is based on one standard definition of family which does not allow for flexibility and will never be able to represent all configurations of family. And at the basis of this ideal family is a patriarchal, nationalistic, cis-heteronormative ideology (re)produced by the *koseki*, which defines the borders of nation, race, family, gender, and sex. Along these lines, it defines the 'right citizen' as someone who has Japanese descent, is cisgender and heterosexual, and was born in marriage. And it defines the 'right family' as one where a cisgender heterosexual couple is legally married, has legitimate children, and where all members of the family share one surname, that of the husband. We can also add that the 'right family' is one where the wife is faithful while the husband is allowed and justified not to be.

2. *Koseki* consciousness

A question that I have been asked many times, by people I have talked to about the *mukoseki* problem, is why women do not choose to just register the child in the ex-husband's *koseki*, and then change the information once the presumption is overturned. To an external observer, a non-Japanese person who cannot grasp the importance the *koseki* has to Japanese people, this could seem like an easy compromise. However, information, once entered, cannot just be changed nor erased, and the *koseki* is not just a document. First, since the *koseki* is not individual based, an item of registration does not only impact one individual but all his or her immediate relatives. And second, entries have an ever-lasting impact. But also, as representative Kamata said during the Legislative Committee of 8 November 2022, the *koseki* is 'heavy' (*omoi*) (see Chapter 4, paragraph 4.1). What Kamata meant was that data registered in the *koseki* has a powerful impact on people's lives. The register sanctions one's legal identity, nationality, and relationships to one's family. Having a *koseki* means being a Japanese citizen and having citizen's rights. It determines who is going to inherit what from whom,

and which surname one will have to use after marriage. Every change in civil status like marriage and divorce is not valid until registered in the *koseki*. But I would add, as other authors do (Krogness 2008, Ninomiya 2014, White 2018), that the *koseki* is 'heavy' also in the sense that it is dense in emotional meaning.

Although the vast majority of Japanese could not tell exactly what the *koseki* does or how it functions, it is equated with family. And this produces a very peculiar relationship between the register and its registrants. According to Ninomiya (2014:169), 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». These *koseki* feelings can also be described as the emotional importance that people assign to the information that is entered in their *koseki*. Referring to the Meiji era, when the modern *koseki* was first created, Ninomiya writes that

> In this way *koseki* came to express the '*ie*', […] the events and items listed within the *koseki* felt like more than mere administrative records and documentation. There emerged '*koseki* feelings' which gave excessive importance to those *koseki* entries, to the in-family name (*kamei*), and to the avoidance of 'staining the *koseki*'. (Ninomiya 2014:175)

In other words, there is also something called *koseki* consciousness (*ishiki*), an awareness of what a legitimate family (*seitō na kazoku*) should be and appear, both on the *koseki* and in real life, and the consequent desire to avoid any deviation from it, to avoid stigmatization (see Chapter 3, paragraph 2). White (2018:10) gives the examples of her interlocutors who would describe their feelings about getting married or divorced by saying that they did not want to 'leave their *koseki*', or that they wanted to 'return to their *koseki*'. It needs to be considered that being part of a certain *koseki* might not necessarily reflect the living arrangements of the family members, who might live apart, but it does have implications that have a deep emotional effect. For example, being part of the same register, and thus having the same surname, allows family members to be buried together in the same *haka*. Not sharing the same *koseki* and the same surname as one's child, as might be the case for a divorced parent, might often raise uncomfortable questions.

While researching the *mukoseki* problem I have encountered several manifestations of these *koseki* feelings. Apart from the most obvious importance attributed to having a *koseki* at all, which is the main struggle for *mukoseki* people, the strategies that mothers use, or avoid, to register their children inform us on the value that they attach to *koseki* entries. Kawamura and her husband, for instance, decided to drop the forced acknowledgement procedure that they had already started when the Civil Affairs' official notice allowed the use of a medical certificate to prove post-divorce conception. They were almost done with their mediation, so timewise it would not have made a difference which

strategy they used, but they chose the medical certificate. The main reason was because the forced acknowledgement procedure would be entered in their *koseki* and her husband «didn't like the phrase [forced acknowledgement], that made it sound like he didn't want to acknowledge [Ko], because he *did* want to make him his child» (Kawamura Mina, 1 October 2022, Tokyo). The fact that such entry would remain on their family register forever, although it did not reflect the reality of their situation, did not feel right. And so, despite all the work they had already put into the legal procedure, they changed course as soon as they could. Ukai Mieko mentioned how painful it was for her that the name of her ex-husband would forever be on her, and her child's, *koseki*, if only to say that he denied paternity of the child. This is something that Ido reiterated many times during the Committee on Judicial Affairs at the House of Councillors. Ukai is one of the few women who choose denial of paternity (*hinin*) as their strategy, because it involves the ex-husband and because it causes his name to be in the child's *koseki* (see Chapter 4, paragraph 1.4). Someone who is not related to the child, and is also no longer related to the mother, would be on their family register. Even thought that would not make him a registrant, that is felt as an intrusion. But in Ukai's case this was the easiest option, since the biological father refused to cooperate with her. Nevertheless, the consequences of that were hard to accept. Ukai Mieko also mentioned that she considered just registering the baby as her ex's child, without trying to overturn the legitimacy presumption, but she could not bring herself to do it because of the consequences it would have on her ex-husband. If she had done that, it would be the husband having a stranger on his *koseki* and she did not want to do that to him. In A-san's case, much more dramatically perhaps, her mother decided to not register her younger sister as well. Because if she had, the younger sister would have taken A's place in the children's birth order. The younger sister would be registered as the fifth child even though she was the sixth. Her mother felt so strongly that this would be unfair to A, that she made another of her children *mukoseki*, although she could register her if she just submitted her birth certificate. There have also been manifestations of *koseki* feelings during the discussion of the reform draft in the Diet. I have already mentioned how Kamata described the *koseki* as 'heavy' (*omoi*), and how Ido insisted on the *hinin* procedure being avoided by mothers because of the name of the ex being entered in the child's *koseki*. She described the way a mother feels when she realizes what the procedure entails as *shitsubō*, which can be translated as 'disappointment' or 'despair'. She also said that «there are no people who want to do that» (House of Councillors 2022:20). Even though *koseki* registers are protected by privacy laws and are no longer publicly available as it used to be, there are instances where someone's *koseki* will be read by a third party. When one gets married, the spouses and possibly their families will have access to the other's *koseki*. According to Ido (19 November 2022, Tokyo) an unusual entry in one's *koseki* might be detrimental to them in such situation. In a country where illegitimate children constitute about 2

percent of births and single motherhood is frowned upon (Hertog 2009), having a *koseki* entry that says that you are not the legitimate child of your mother's ex-husband might expose you to prejudice and discrimination. And the MOJ's justification for the need to specify that so-and-so is *not* the ex-husband's child, after it has been proven through denial of legitimacy, is tautological. They maintain that it needs to be recorded because it needs to be recorded. It seems to be yet another way for the MOJ to create obstacles for mothers. What is interesting, though, is that the majority of women do not give in to the bureaucratical pressure and opt for procedures that do not result in the ex-husband's name being entered in the child's *koseki*. Even though doing so reduces their already limited options to register their children, they are not willing to comply.

3. Gendered shame and the absence of a collective movement

Despite being such a serious problem, that affects at least 3,000 children every year, the *mukoseki* phenomenon is still largely unknown in Japan and abroad and there is very limited activism surrounding it. As we have seen, Ido is the main activist and has been an advocate for *mukoseki* rights in the last twenty years, followed by Ichikawa who started her non-profit organization in 2014. Ido does most of the work by herself, although over the years she has been aided by people such as lawyer Takatori, who defended many *mukoseki* cases pro bono and travelled with Ido all around Japan to meet with them, and Kawamura, who has been a representative for Ido's NGO in Tokyo when Ido was still living in Hyogo prefecture. But she has worked mostly alone. She explained to me that the reason that allowed her to be so outspoken about her own struggle and to become an advocate for others is that she got pregnant with Migoto after divorce, and he was born after she had remarried (see Chapter 4, paragraph 1.5). She had also been separated from her first husband for four years when she got divorced, so nobody could accuse her of adultery. She was in the best position to speak openly about it. The same cannot be said for most women who are affected by the 300-day rule. The strong stigma surrounding women who fail to fulfil social expectations as wives and mothers, both because they might have had extra-marital relations and because they chose not to register their children makes them 'bad mothers'. 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 (Macleod, 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» (Rose 1996:135) 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 (Lutz, Abu-Lughod 1990; Ahmed 2004), and shame is especially so.

By feeling shame for deviating from the social script, mothers tend to blame themselves, and placing the blame on the supposedly neutral legislation and registration regulations becomes hard, if not on a cognitive level, on an emotional one. In lawyer Minami's (17 October 2022, Tokyo) words, mothers «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'» and the fact that they blame themselves and not the law, is the biggest obstacle that these women have to overcome when taking legal action. Even though it is Article 772 to be at fault because *mukoseki* cases keep arising and yet the law is not prepared to deal with them. The shame that mothers feel is also internalized by their children, and so it is passed down to the next generation. As we have seen in Migoto's case, even though he was *mukoseki* for only a year and had no recollection of it, not to mention that his mother is very outspoken about it, at twenty years old he had not yet felt comfortable enough to tell any of his friends about it (see Chapter 4, paragraph 2.2). And in A's case, who lived for thirty-seven years without a *koseki*, the shame and guilt she feels for having to lie about her identity to survive still prevent her from telling her friends. This social stigma makes it extremely hard for people to speak out and share their stories publicly unless, like Ido, they can easily rebut any accusations. The legitimacy presumption system, which the government maintain is for the 'benefit of the child', makes women feel like *they* have done something bad and that is why their children are *mukoseki*, and Koseki Law, which makes parents responsible for children's registration, add to this feeling of ineptness. So, even if mothers know that Article 772 limits their choices and puts great pressure on them to accept unfair registration rules, on an emotional one they feel ashamed of their irregular situation. Especially because, in many cases the conflict with the legitimacy presumption arises when women have deviated from the sexual script, which sees marriage as the only rightful locus of reproduction (Hertog 2011, White 2018), by having extra-marital relations or by having relations soon after divorce and without having remarried. And it is difficult for them to find fault in the *koseki* or in the legislation. The fact that mothers of *mukoseki* children are almost always represented as 'bad mothers' in the media, especially popular media, likely reinforces this sense of shame.

But to understand the reasons behind the absence of a collective movement it also needs to be considered that people facing the *mukoseki* problem are scattered throughout the entire country and would hardly be able to physically get together and create a sense of community. According to Ido, this is something that sporadically happened, before the COVID-19 pandemic. In 2007 a group of mothers who were all going through mediation at the same time formed a network and kept in touch. After that Ido used to hold a yearly meet-up and some of the people she helped stayed in contact. But she added that people's involvement usually ended either when they got a *koseki* or when they failed

to get one. But even those meetings had to stop because of the pandemic. Moreover, each case may be very different and unique and this likely makes it hard for people to relate to one another and seek a connection. And in cases that involve domestic violence, as it was for Saito-san, mothers might be afraid to share any personal information that could identify them and, as a result, refrain from engaging with others altogether (see Chapter 4, paragraph 1.3). One more factor to be considered is that *mukoseki* adults are an extremely vulnerable population, who lack the financial freedom to dedicate their time to activism. This applies to people who are currently *mukoseki* but also to people who obtained their *koseki* when they were adults. As Ido explained to me when I first met her, the struggle is not over once they are finally registered. The consequences of being *mukoseki* for decades cannot be averted by this long-awaited piece of paper. The lack of an education, of work experience and, in general, of life experience make earning a living and maintain relationships very difficult. Most of their energies are spent overcoming these pressing issues and, in these circumstances, activism sounds like a luxury they cannot afford. Not to mention that they have spent most of their life at the margins of society and they might not want to appear 'different' anymore. Not only Ido had the chance to be vocal because she could not be accused of adultery, but perhaps even more importantly, she had the time and financial resources to dedicate twenty years of her life to activism. She also had the right educational background and the right connections. To her, a political career was a viable option. But hers was a unique case. Which by no means makes her endeavour less valuable. She sacrificed so much of her time and energy to commit herself to this cause. And when I asked her whether she felt there was something positive that came out of her experience as mother of a *mukoseki* child, she said that although she is glad that she had created some positive changes, «if I ask myself whether it was such a great thing to commit myself and my life, personally, until old age [to this cause], the answer is nuanced, because I wonder for what else I could have used all of this energy» (Ido Masae, 19 November 2022, Tokyo). Ido is not going to be able to carry on with her advocacy work forever, and so she hopes to find someone who would replace her, but she has not found any candidates yet.

4. Veiled feminism: advocating for mothers by pushing for children's rights.

During participant observation at the National Diet and interviews with activists and mothers, I realized that the *mukoseki* problem was always presented as a children's rights issue, and almost never a women's rights issue. Newspapers also tend to represent the phenomenon in these terms. In the public sphere, both conservatives and authors of the reform on one hand, and, on the other, progressive politicians critical of the reform and feminist activist Ido Masae always discuss the *mukoseki* problem in terms of children's rights. Conservatives claim that the legitimacy presumption

system cannot be changed or rendered more flexible for the sake of children. It would be, they maintain, to their detriment. Progressive politicians like Suzuki Yosuke, Terata Manabu, and Yoshida Harumi, and activists like Ido also argue that it is for the sake of children that they want Article 772 to be changed. In their argument they include the problems that mothers face, but women are not depicted as the protagonists of the *mukoseki* problem, but as their children's advocates. The law is said to discriminate children born in non-normative circumstances but is rarely said to discriminate women. It is often said, both in the media and on either side of the political debate, that it is unfair for a child to suffer the dramatic consequences of the being *mukoseki* especially because 'they have no fault' (*nan no tsumi mo nai*) for it, because they cannot choose the circumstances in which they are born. Often, this seems to imply that mothers, on the other hand, are at fault. When women are mentioned in the debate, it is to discuss the obstacles that prevent them from giving their children what they deserve and have a right to, a *koseki*. It is not, however, to argue that they too are suffering an injustice, that the presumption system is biased and discriminates against women, and that they too have no fault. When advocating for a solution to the *mukoseki* problem by stressing the innocence of children and the moral imperative to protect them as a society, feminist Ido Masae is making a strategic choice: she wants to get through to the conservatives that oppose change, by appealing to a moral value that they share. Although Ido does not shy away from using terms such as gender discrimination or misogyny in her books or when she writes for newspapers, she is more careful about her language in the political arena. As reported in Chapter 3, paragraph 7.5, Ido feels she would not be listened to if she put women's rights at the forefront of her strategy. Moreover, she would probably be heavily criticised. In this context, Ido chose to shift the focus on children, hoping to get through to the LDP. As I have discussed in Chapter 3, despite being a conservative party, the LDP has been the only one to try and address the *mukoseki* problem with a reform, and it is also the one in the best position to make changes since it has been in power almost continuously since its formation in 1955. , Although she does not share most of their beliefs, Ido believes that finding common ground is the best strategy. And, as illustrated in Chapter 2, paragraph 4, it is one that is rooted in the history of Japanese feminism (Molony 1993, Nemoto 2016). The strategy adopted by Ido echoes the motherhood protection (*bosei hogo*) debate of the 1910s, which stressed the importance of the protection of women's capacity to support their children to advance women's rights (see Chapter 2). The *bosei hogo* rhetoric has played an important role in the political discourse on female participation in the workforce since the early 1900s, and again in the 1970s during the debate on the Equal Employment Opportunity Law and was used both to push for equal rights and opportunities by feminists, and to stress the supposedly fundamental differences between male and female workers to ultimately reproduce a sexual division of labour by conservative policymakers. This strategy turned

out to be a double-edged sword because the same argument could be used to opposite ends. Ultimately it failed in pushing forward the feminist agenda. In the same way, in the contest of the *mukoseki* problem, shifting the focus on children's rights risks being ineffective. Because if, on the one hand, publicly calling the legitimacy presumption misogynistic and patriarchal would probably be met with harsh criticism and might not lead to a constructive dialogue, on the other, children's safety and wellbeing seems to mean different things for the MOJ and the conservatives of the LDP, than it does for Ido and more progressive politicians. These two notions stem from very different assumptions. This, in turn, allows both fronts to use the same argument for opposite agendas. As it emerged from the discussion about the reform in the Diet, the MOJ remained adamant that Article 772 is necessary and beneficial for children. It can be argued that by insisting on gender discrimination created by Article 772 and the fact that, as the Justice Minister himself said, it is a deterrent for women's infidelity, the MOJ would not have the possibility to turn the tables and use the same argument for their own purposes.

5. Mothers' agency

Despite being the targets of conservative bureaucrats' attempt to control reproduction and impose a normative notion of family, mothers of *mukoseki* children are not at the centre of the media or political debate around this phenomenon, if not as advocates for their children. And when they are featured in the media, they are often portrayed as perpetrators of child abuse and neglect, and they are targets of hateful comments on social media. Both the political debate on the issue and the registration regulations place responsibility on them for their children's *mukoseki* status. They have a legal duty to register their children and they choose not to. The *koseki* as in institution works in ways that are invisible to the individual, through a network of offices, documents, and different actors, and is presented by the Japanese government as a value-neutral document whose discriminatory effects are only collateral and unintentional, and therefore is not at fault and does not need to be changed. The 2022 reform reinforces this notion because it requires mothers to take legal action to challenge the paternity presumption and, therefore, gives them the responsibility to solve their children's *mukoseki* status, although the reform does not eliminate all the obstacles that might make it difficult for women to do so. And this is why mothers are often the scapegoat in the public debate, and why they themselves feel at fault and ashamed, not only for not registering, but for having conceived a child in circumstances that are considered illegitimate, on a legal level, and immoral, on a moral level. However, mothers that are caught up in the 300-day problem keep delaying registration, going to court, and overturning the legitimacy presumption of Article 772. Despite paying a steep price for it, they keep creating a quiet but relentless friction, that sheds light on the *koseki* system's merciless

rigidity. They do not oppose the *koseki* system, they follow the rules and the procedures the MOJ indicates, they go to court and endure administrative and legal systems that blame them for the injustice they are facing. They are, unwillingly, troublemakers in the eyes of the State. If we apply Mahmood's (2001, 2005) definition of agency, detached from what she calls a 'teleology of progressive politics', as a capacity for action that varies across different cultures and histories that does not necessarily involve challenging hegemonic norms, nor it necessarily requires a desire for freedom, we can see that mothers of *mukoseki* children do have this capacity for action, they do have agency. They strive to fit the *ko*, the standard *koseki*-family, they do not want to besmirch their *koseki*, and they do not want to abolish the legitimacy presumption system. However, they take advantage of the inconsistencies within the system, the cracks and crevices which allow for individual choice even within such a pervasive, inescapable registration system, which they must be a part of. They find ways to achieve their goals within the system, without destabilizing it. Moreover, the fact that they refuse to register their children in their ex-husband's *koseki*, as the law requires them to do, even though it would be easier than going to court, has compelled the government to finally issue a reform. And even though this reform might not be a significant step forward, it is the first time in 124 years that the legitimacy presumption law has been amended, and the MOJ has been compelled to promise to take further measures to eliminate the *mukoseki* problem.

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