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SOME MATRIMONIAL PROBLEMS APPEARED IN THE FAMILY COURTS OF JAPAN

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I Prologue

For the study of matrimonial problems that appear at courts, especially family courts, it is extremely difficult to point out a specific character of the general marital problems if they are discussed strictly separate from divorce questions. It is because most of the problems brought before courts or family courts are divorce questions or questions related to divorce, and the court usually concentrates on solving divorce matters at first instead of thinking over other matrimonial problems.

Of course, it is not totally impossible to induce general matrimonial problems from divorce questions by analysing various objective situations expressed by persons involved in the court problem. Strictly speaking, however, it is still doubtful that such problems could be called "matrimonial problems handled at the court." It would especially be premature to consider that the conclusion induced from the divorce question could become the object for discussion of matrimonial problems at the court. Because such a discussion is perhaps nothing but a theoretical study by a scholar how the matrimonial problems have been induced from divorce questions. Since matrimonial problems placed at the court are mostly divorce problems, judges and other officials try to solve divorce problems first of all and do not make much effort to study carefully the general outline of matrimonial questions. None the less, the attempt to induce general matrimonial problems from the divorce matters is of great significance. Japan's new matrimonial law which was extensively revised after the war, is based largely on the idea of small family system cultivated in civil societies of advanced countries in America and

Europe. It also emphasizes the ideology of the equality between male and female. The present matrimonial law, in this way, contains many different aspects from feudal family system including primogeniture and the custom of predominance of male to female. Therefore, the study on the general matrimonial problems through divorce matters provides us the most positive means for the study on how Japanese people who had been subjected to the feudal family system, are actually influenced by the new matrimonial law being observed at courts and family courts today. It is regrettable, however, that such a significant attempt could be made only through divorce affairs, and the situations related to divorce matters do not necessarily provide enough material for the study that I am now planning to make. In any way I am assured that my study would present something worthwhile to show in what way Japanese society's attitude toward the modern matrimonial problems has been transferred and how the present social status differs from the ideology of the new matrimonial law.

The first matrimonial question that could be induced from divorce cases appeared in courts is the form of marriage. Because courts, especially family courts, frequently come across the questions of unregistered marriages and others related to this category. Next, a considerable number of divorces are caused by quarrels between a mother-in-law and a bride. It is easily understood that discord between a mother-in-law and a bride can be attributable to the still existing large family system which has been inherited from the old feudalistic era. The family status in civil society is so called small family system which consists of husband, wife and their children. On such a family pattern, Japan's civil law abolished the feudalistic family system after the war and adopted instead the small family system as a new family pattern. In Japan, however, discord between a mother-in-law and a bride remains to be a serious question and accounts for a large number of divorce cases. The fact underscores a typical contradiction between the new theory and the actual status of Japanese family. Research on how to eliminate such a contradiction is of great significance. The second outstanding reason for divorce including dissolution of unregistered

marriage is the adultery of a partner. The monogamous system has been well practised in Japan as the fundamental form of family system. And why does such infidelity of a partner occur? Does the monogamous system have any deficit as a marital form? Is that a phenomenon peculiar to Japan only? What is the true cause of that phenomenon, decadence of morals or economic destitution? To find out the true cause of divorce and to induce sound conjugal relations in the monogamous system is the very core of the matrimonial law. Unequal distribution of property between husband and wife (*alimony*) is also one of the major causes of divorce cases in Japanese Courts. As many scholars have so far pointed out, the amount of property distributed to wife (*alimony*) is quite small. The establishment of an appropriate distribution system (*alimony*) would play a vital role in promoting wife's status in the family. And this is the third question to be handled by the marital law.

There would be some more causes for divorce but the above-mentioned three problems are most closely related to the core of matrimonial problems. Therefore the author confines himself discussions of these three categories.

II Problems on the Form of Marriage

Dissolution of unregistered marriage accounts for a large percentage in divorce cases that are brought to courts or family courts. Japan's civil law in the Showa era as well as the Meiji era stipulates the legal marriage principle. However, the Japanese have actually been not so familiar with the legal marriage principle. There have been many cases of unregistered marriage as some people entered in their marriage life without taking legal procedures of marriage. One of the reasons why such unregistered marriage relations took place is found in the traditional ideology that the purpose of marriage is to attain prosperity of descendants. Thus legal registration was usually suspended until a wife delivered a child. According to the civil law in the Meiji era, establishment of marriage relations was made possible with the consent of the parents or heads of families of betrothed husband and wife. Those who

were not given the consent were forced not to take legal marriage procedures that the law required. Because of such parents' right of marriage consent in the Meiji era, the legal marriage principle had been virtually made a mere superficial juridical system. But since the parents' right of marriage consent has been abolished in the civil law in the Showa era, it might well be conceivable that the legal marriage principle could now become the marriage procedure. None the less, there are still quite a few cases of unregistered marriages among divorce matters that are handled in courts or family courts. This implies that the study whether marriage should be the legal marriage or the actual marriage is still an important question today. It might in a way be considered that the unpopularity of the legal marriage principle could be attributed to people's lack of knowledge of legal rules. However, this way of thinking also required further study. A considerable number of people involved in unregistered marriage do not practise legal registration not because they do not know that the marriage relation can be legally established only after the official registration, but because they just fail to register their marriage even though they are quite aware of the legal registration. According to my experience as a Judge of family court, (As the President of the Osaka Family Court) one of the reasons for the negligence to take legal procedure is that some people assume unregistered marriage as a kind of experimental duration. They believe that once their marriage is officially registered the status of husband and wife is legally set. When they want to dissolve their marriage later, it would be extremely difficult to do that if one of the partner is opposed to the dissolution. Moreover, the fact that they are married is clearly defined in the census registration. Such a way of thinking is found especially in the minds of parents and third persons, not in the marriage couple. Third persons still possess considerable influence on marriage procedures, and this is the reason why the establishment of marriage relations in Japan today contains a serious question despite the fact that the legal procedure of marriage stipulated in the modern civil law has been greatly improved compared with pre-war days.

It is a prevailing custom in America and European countries that marriage relations are established after an engagement period. Law of those countries also stipulates various facts related to the status of betrothed husband and wife during the engagement period. The same custom has also been observed in Japan, but the engagement had most probably been decided by parents and other third persons, not through the consent of the contracting parties. Most of marriages before the war had been decided by means of marriage interview. Each contracting party did not have enough chance to thoroughly understand its partner before the wedding ceremony was held. Even their parents did not have any effective method to get information about the other partner except hearing from go-betweens. Lack of information about the partner before the nuptials could be regarded as the most positive reason why they married temporarily without registering the marital function. After the war, men and women got freedom to associate with each other, and the social intercourse between men and women has become a customary event in Japan. However, this custom differs greatly from that of America and European countries where they keep contact with each other on the assumption that they are officially engaged and announce their engagement to the society. The mere association instead of definite engagement gives rise to the obscure marriage status which can not be considered as the legal marriage life no matter how the married couple lives together. It is of course necessary to discuss which is the more sound marital status, the legal marriage principle or the actual marriage principle. In any case, however, the more important question to be discussed is that a new engagement custom like that of America and European countries should be created in order to establish effective juridical regulations to solve various marital problems.

III Problem on Family Structure

The discord between mother-in-law and bride, among others, is considered the fundamental cause of divorce suits brought before the courts, especially the Family Courts. This dispute between in-laws

raises many questions from various angles with regards to the matrimonial problem in this country. In the first place, this fact may be interpreted to indicate that the Japanese family structure, despite its postwar change, as a legislative system, from the large family system in feudal society to the small family system in civic society, still has a long way to go to completely adapt itself to the new family system. It goes without saying that the postwar legislation relevant to the family system has adopted the small family system under which a family is composed of husband and wife and their children under age.⁽¹⁾ In other words, man and woman, by contracting a marriage, are able to leave their parents to register as a separate family. A law also provides that a child, when he reaches full age, can register as a separate family of his own by free will.⁽²⁾ The actual family structure, however, does not always coincide with what a relevant law stipulates. Parents of the husband and in not few cases his brothers and sisters join the family which should be composed of man and wife and their children under age. In most extreme cases, even the grandparents of the husband live under the same roof. It is easily imagined that under such living conditions a wife tends to become emotionally rebellious against the family members other than her husband, especially her mother-in-law, as an inevitable consequence. This emotional conflict may affect her married life, eventually bring about a marital collapse. We have seen in the foregoing paragraphs the discrepancy between the small family system as stipulated by law and the actual state of a family structure. This requires serious study from various angles. Historical study shows that the change in social structure from the feudal one to the civic one is accompanied by the change in a family structure from the large family system to the small family system. We need not bother about this problem here. No doubt the Japanese society today can rightly be called civic society and accordingly, the family structure should be of small family system. Why such discrepancy, then? This problem should be viewed from the two different angles... the people's respect of law and economic life.

From the viewpoint of the respect of law, the small family system

made considerable progress among city dwellers in prewar years. After World War I, capitalism rapidly got hold of Japanese economy and various industries flourished centering on major cities. Keeping with the rapid tempo in industrial development, social life based mainly on thriving industries became highlighted, causing the cityward tendency of population. This necessitated the small family system in urban areas. It must be noted in this connection that the small family system was adopted chiefly by the second and third sons and the eldest sons were still bound up in fetters of feudalistic conventions. In this sense, the small family system was working not in such a manner as it should be. The development of the small family system, although in a limping manner, made it more and more difficult for city dwellers to find houses to live in, placing tenants at a great disadvantage. It was indeed to relieve tenants from housing difficulties and strengthen their position that the House Lease and Land Lease Laws were enacted. The small family system as adopted to the real life greatly contributed to the enlightenment of the people with regard to the small family system as a legal system. The outbreak of the Manchurian Incident and the ensuing World War II placed Japan under the control of militarism and the idea of feudalistic family life under the patriarchal system made a rapid comeback. To make the matter worse, housing shortages caused by frequent airraids necessitated the return to the large family system and the people's understanding of the small family system as a legal system ceased to develop.

Following the termination of World War II, the small family system has been legalized, as mentioned earlier, with the new provisions to the Family Registration Law. The militaristic control and idea are no longer in existence, yet the small family system is not so popular as it should be. Its reasons are purely economical. Firstly, there is the housing problem. As is already known, Japanese cities, with few exceptions, were practically ruined during the war due to successive airraids. The rehabilitation is not yet complete although more than a decade has elapsed since the war. This delay in housing reconstruction makes it exceedingly difficult for a newly-wedded couple to make their new

home apart from their parents. As a result, it is not a rare sight to see a newly-wed lives with the parents, brothers and sisters of her husband under the same roof. It is only the privileged few that are able to make their new homes leaving the family of the husbands. Such a situation peculiar to the postwar Japan is partly responsible for the fact that the small family system, although legalized after the war to be adopted as an ideal family structure, is incompatible with the actual state of things. Secondly, there is the problem of the responsibility of supporting among relatives. Under the various kinds of social security systems established after the war, the people can obtain guarantee against senility, diseases and calamities from the Government or organizations they belong to. The situation is still far from satisfactory as compared with western countries. This means that the people, if unable to cope with the difficulties of living resulting from old age, diseases or calamities, have no alternatives but to depend upon the mutual assistance among relatives. The fact that not even the slightest change was made in regard to the fundamental idea underlying the support responsibility among relatives in revising the Civil Code after the war is considered to reflect the actual conditions in this country. The duty of supporting among relatives, the law provides, should not be limited to lineal relatives but to be extended to brothers and sisters. When specific circumstances exist, one shall be obligated to support any relatives to the third degree, if the Family Court has so ruled, the law also provides. (Cf. Para. II, Art. 876, Civil Code of Japan). Meager national income means individual inability to meet any situations resulting from senility, diseases or calamities. After all, the duty of supporting among relatives in this country not only remains legal but has a highly significant role in the society. In other words, it can be said, the feudalistic family system, although ceases to exist as a legal system, will die hard so far as the duty of supporting is concerned. The various conditions mentioned above retard the development of the small family system in Japan, making it more and more difficult for a married couple to live by themselves without any outsiders.

By marriage is meant a life devoted to a lifelong union of man

and woman. It goes without saying that so long as a marriage means a lifelong union, whether it should be viewed as a civil contract between the parties concerned, the dissolution of a marriage, that is, a divorce, in lifetime should be avoided as much as possible. Still less, such a divorce as resulting from reasons that exist not between a married couple but between the third party and either of a married couple, should be avoided by all means from the viewpoint of the intrinsic nature of a marriage. It was the glaring fact in Japan that the dispute between mother-in-law and bride used to play a dominant role in marital collapses. This might have been considered inevitable sometimes, under the feudalistic family system, for the preservation of pedigree and other plausible reasons.⁽⁹⁾ Now that the small family system has been legalized, such causes of divorces should be dismissed at all cost. The fact that the discord between in-laws still constitutes the major factor for matrimonial dissolution as seen in the courts, especially in the Family Courts, indicates that the small family system has not yet been fully adopted as a family structure.

What measures should be taken, then, to transform the family structure into the one as required by the law? The first step will be to promote the people's understanding of the small family system. Despite the fact that the large family system was abolished by a legislative measure, the efforts to enlighten the people on this system cannot be said to be satisfactory for such prewar and wartime reasons as mentioned earlier. It is not seldom that the earnest desire of a newly-wed to live separately from the parents of the husband is discouraged by parents' censure. More often than not a newly-wed, particularly the husband, considers it undesirable to live separately from the parents in relation with the problem of supporting. Such erroneous conception of the family structure is either rooted in feudalistic conventions or based on the confusion between the problem of supporting and that of the family structure. It is necessary to make the people understand, by seizing every opportunity and by every means, that the change from the large family system to the small family system is the natural consequence of the progress of mankind. Such efforts will not achieve the

desired results if not accompanied by the efforts to remove those social environments which are deterrent to the understanding of the small family system.

Speaking of the social environments, the problem of housing comes first. It is important, first of all, to build houses suitable for the small family...husband and wife and their children under age....in quantities and with utmost haste. Due to the various circumstances with regard to construction investment, we cannot expect much from individuals or private enterprise and must depend on the Government or public corporations. Next comes the expansion and strengthening of social security systems. Now that the responsibility of supporting among relatives as provided by the law and low national income constitute another major factor deterrent to the small family system, the mutual assistance among relatives along is incapable to cope with living difficulties resulting from senility, diseases or unemployment. This is the reason why social security systems need expansion and strengthening. The efforts thus exerted will help to make the actual family structure coincide with what the relevant law requires.

It is worthy of note that the majority of divorce suits brought before the courts, especially the Family Courts, are ascribable to the adultery on the part of either of a married couple.⁽⁴⁾ It also merits attention that divorce cases attributable to the adultery on the part of a husband surpass those attributable to the side of a wife and that the adultery on the part of a wife is responsible for the considerable number of divorce cases. This fact calls for the study of monogamy as one aspect of a family structure.

It was only in primitive society that marital relations such as polygamy and polyandry existed among mankind. Monogamy is the principle universally adopted by every civilized countries of the world today. Since it was first enacted after the Meiji Restoration, the Japanese Civil Law also has adopted monogamy, banning bigamy. The overwhelmingly high rate of adultery given as the cause of divorce cases submitted to the Family Courts may indicate, however, that monogamy is not strictly observed as an ideal marital relation. If this is the fact, then, it will

be necessary to look into the reasons for it. There may be some who criticize my reasoning as highly dangerous saying that I am attempting to gauge normal marital relations by the highly exceptional phenomenon ...a divorce. My inference, it may safely be said, is not entirely without its ground in view of the fact that statistically the number of divorce cases tend to increase year after year all over the world⁽⁶⁾ and that the majority of such cases are attributable to adultery. Especially, in Japan where divorces by agreements are permitted, those not brought before the court may account for the overwhelming majority of divorces⁽⁷⁾ and it can easily be imagined that infidelity is responsible for the most of those divorces by agreement.

Why, then, is it difficult for mankind to stick to monogamy which it has adopted as a legal system? There may be several reasons for it. First of all, there is the deterioration of sexual morality. Originally, monogamy is not rooted in human instinct. Instead, it is considered to originate in sexual ethics based on the Christian idea. This means that human race cannot keep monogamy without the sufficient knowledge of sexual morality and the firm determination observe it faithfully. Without these two factors, monogamous marital relations will completely be destroyed. Any measures taken to establish sexual morals will prove unsatisfactory, if they are not accompanied by the efforts devoted to the study of causes which tend to loosen sexual ethics. It is important, first of all, to study the reasons why either husband or wife turns false to her or him. Judging from the marked tendency shown in the Family Courts and from my own experience, the time when husband becomes unfaithful to his wife, in most cases, coincides with the time when his position, both economically and socially, has been stabilized. On the other hand, it is when her husband has become economically incompetent that a wife shows a tendency to turn treacherous to her husband. This frequently happens when a wife has taken the place of her husband who has lost his economical ability due to the radical postwar change in economical environments. Thus, both husband and wife find that his or her conviction in sexual morality is suddenly shaken when the economic balance between both sexes has been lost.....whether the

unbalance has taken place on the husband's side or on the wife's side. No doubt there may be cases where the alienation of affection is responsible for adultery but such cases are quite rare. The cause of adultery is always accompanied by economic reasons. The problem of adultery, which is seemed to originate in the lack of sexual ethics, is after all attributable to economic reasons.

What is peculiar to the divorce suits brought before Japanese Family Courts on the ground of the adultery on the part of a husband give another reason for a divorce...non-support. In other words, a wife will not dare to seek divorce from her adulterous husband, so long as he continues to support her in the same manner as before. This fact, however, does not mean that a wife will dismiss the adultery on the part of a husband unless he neglects her support for his unfaithfulness. It is only because a economically weak wife knows that seeking divorce only for infidelity will drive her into the paws of death. It is true that such a misgiving of a wife can be dispelled, to some extent, by utilizing the property distribution system (*alimony*), but the social conditions today prevent the system from working in a satisfactory manner. Under these circumstance, a wife will never attempt to seek divorce only for adultery. This fact is sufficient to indicate that monogamy is not rooted in human instinct but is a mere ethical idea and that such an idea is easy to collapse under economic pressure.

In the foregoing paragraphs, we have seen that the conviction in monogamy as a family structure is at the mercy of economic pressure. If this is really the fact, it will be necessary for us to study whether monogamy will be maintained forever as an ideal family structure in human society. However, such discussions are outside the range of my lecture here. I will be content with discussing, through divorce suits submitted to the Family Courts, some doubts on this problem.

(1) (2) Cf. Para. 1 of Art. 16 and Art. 21 of the Family Registration Law of Japan.

Although I call this the principle of one home for one married couple, there are no relative provisions whatsoever in the Civil Code. Only the above provisions of the Family Registration Law set forth this principle as the one to be applied to family registration. My interpretation is that this particular principle of family registration was incorporated in the new Family Registration Law on the assumption that the principle

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of one home for one married couple will be adopted into the Civil Code. The old Family Registration Law provided that a family should be registered with a patriarch as the center reflecting the feudalistic family system.

(3) The old Civil Code of Japan had the provisions stipulating that maltreatments or grave insults between a spouse and his or her lineal descendants independently constitute grounds for divorce.

Grounds	Husband	Wife
Adultery	2,486	505
Cruelty	2,169	43
Desertion	727	95
Spendthrift	876	71
Crime Involvement	194	20
Diseases	174	327
Discrepancy Of Character	1,316	1,186
Discord With Lineal Descendants	235	177
Economic Trouble	691	26
Others	955	669
Grand Total	9,823	3,119

(4) Given left is the total number of divorce cases settled in the Family Courts of Japan throughout the country in 1954.

Of the total of 12,942 cases, husbands are responsible for 9,823 and wives for 3,119.

(5) The list below, appendix to the report by the Royal Commission on Marriage and Divorce submitted to the Parliament in March, 1956, shows the number and rate of divorce for the period from 1910 to 1953 in the 12 countries of the world. The rate given being per 1,000 population, due consideration must be given to the ratio between married and unmarried population in in each country. Figures for divorce, except for the U.S.A., do not include annulments.

Year	England		Scotland		Australia		Canada		U.S.A.		Sweden	
	Nos.	Rate	Nos.	Rate	Nos.	Rate	Nos.	Rate	Nos.	Rate	Nos.	Rate
1910	579	0.02	222	0.05	443	0.11	51	0.01	83,045	0.90	609	0.11
1915	668	0.02	238	0.05	649	0.13	53	0.01	104,298	1.04	770	0.13
1920	3,041	0.08	706	0.15	1,144	0.21	468	0.06	170,505	1.60	1,325	0.22
1925	2,563	0.07	448	0.09	1,836	0.31	550	0.06	175,449	1.50	1,748	0.29
1930	3,482	0.09	462	0.10	1,772	0.27	875	0.09	195,961	1.59	2,219	0.36
1935	3,942	0.10	520	0.10	2,331	0.35	1,431	0.13	218,000	1.71	2,716	0.44
1938	6,092	0.15	812	0.16	3,051	0.44	2,226	0.20	244,000	1.88	3,482	0.55
1940	7,602	0.18	794	0.16	3,205	0.46	2,369	0.21	264,000	2.00	3,487	0.55
1945	15,221	0.36	2,205	0.43	7,114	0.97	3,076	0.42	485,000	3.47	6,458	0.97
1946	29,100	0.68	2,878	0.56	7,155	0.96	7,683	0.63	610,000	4.35	6,988	1.04
1947	58,444	1.36	2,499	0.48	8,706	1.15	8,199	0.65	483,000	3.37	7,051	1.04
1948	42,711	0.98	2,020	0.39	7,184	0.93	6,881	0.54	408,000	2.79	6,782	0.99
1949	34,217	0.78	2,418	0.46	6,567	0.83	5,934	0.45	397,000	2.67	7,609	1.09
1950	30,331	0.69	2,185	0.42	7,358	0.90	5,373	0.39	385,000	2.55	8,009	1.14
1951	28,265	0.65	1,927	0.38	7,269	0.86	5,263	0.38	381,000	2.48	8,431	1.19
1952	33,274	0.76	2,701	0.35	7,042	0.81	5,634	0.39	...	...	8,159	1.15
1953	29,736	0.67	2,353	0.46	...	...	6,110	0.41	...	...	8,410	1.17

Year	Denmark		Norway		Switzerland		Netherlands		Belgium		France	
	Nos.	Rate	Nos.	Rate	Nos.	Rate	Nos.	Rate	Nos.	Rate	Nos.	Rate
1910	749	0.30	412	0.17	1,527	0.41	881	0.15	1,089	0.15	14,261	0.36
1915	878	0.30	561	0.22	1,472	0.38	1,166	0.18	...	...	1,638	0.05
1920	1,197	0.35	660	0.25	2,217	0.58	1,962	0.29	2,195	0.30	29,115	0.75
1925	1,889	0.55	687	0.25	2,223	0.57	2,198	0.30	2,503	0.32	19,871	0.49
1930	2,300	0.65	879	0.31	2,723	0.67	2,851	0.36	2,491	0.31	20,367	0.49
1935	2,902	0.81	983	0.34	3,015	0.73	2,971	0.35	2,575	0.31	21,004	0.51
1938	3,394	0.90	1,241	0.42	3,390	0.81	3,262	0.38	3,501	0.42	24,318	0.59
1940	3,472	0.91	965	0.32	3,039	0.73	2,947	0.33	1,803	0.22	11,070	0.28
1945	5,849	1.44	1,918	0.62	3,726	0.84	4,598	0.50	3,178	0.38	23,248	0.59
1946	7,500	1.83	2,064	0.66	4,298	0.96	10,116	1.07	5,653	0.68	51,946	1.29
1947	6,943	1.67	2,236	0.71	4,280	0.95	8,847	0.92	6,825	0.81	57,413	1.41
1948	7,120	1.70	2,129	0.67	4,292	0.94	8,038	0.82	6,518	0.76	47,015	1.14
1949	6,991	1.65	2,350	0.73	4,111	0.89	7,004	0.70	5,988	0.70	39,502	0.95
1950	6,868	1.61	2,324	0.71	4,241	0.90	6,462	0.64	5,100	0.59	35,391	0.84
1951	6,681	1.55	2,151	0.65	4,295	0.90	6,075	0.59	4,366	0.50	33,644	0.80
1952	6,753	1.55	2,116	0.64	4,188	0.87	5,828	0.56	4,211	0.48	32,532	0.76
1953	6,515	1.49	2,076	0.62	4,406	0.90	5,471	0.52	...	...	29,900	0.70

(6) The following is another list accompanying the same report by the Royal Commission on Marriage and Divorce, which shows the number of divorce cases settled in England and Wales. A glance at the list will show you that adultery accounts for the major reason for marital collapses.

Year	Nos. of Divorce	Grounds					
		Adultery	Desertion	Cruelty	Insanity	Believed Death	Sodomy
1938	7,621	5,349	1,874	306	79	13	...
1939	8,248	4,439	2,905	596	260	45	3
1940	7,111	4,006	2,440	476	164	24	1
1941	6,318	3,562	2,286	323	137	10	...
1942	8,608	5,164	2,870	384	175	12	3
1943	10,724	6,615	3,418	428	188	17	4
1944	14,356	9,118	4,385	617	214	17	5
1945	18,982	12,509	5,415	819	221	28	...
1946	38,871	22,252	8,172	1,153	277	15	2
1947	52,249	37,297	12,710	1,881	292	58	11
1948	40,764	24,635	13,281	2,385	384	72	7
1949	33,967	15,608	15,535	2,406	347	62	9
1950	29,482	12,413	14,219	2,523	271	52	5
1951	29,936	12,008	14,616	2,986	273	46	7
1952	31,966	13,221	15,038	3,297	326	66	18
1953	29,275	12,341	12,981	3,622	241	71	19
1954	27,353	11,794	11,640	3,593	239	74	13

(7) The following list shows the total number of divorces and that of those by agreement in Japan. The number of divorces by agreement does not include divorces by arbitration. (Excerpt from "The Study of Causes of Divorce.....Statistical Data by Mr. Ohta).

	1949	1950	1951	1952	1953
Total Divorces	82,574	83,689	82,331	79,021	75,255
Total Divorces By Agreement	80,028	79,955	77,679	74,139	70,477

IV. Problem on Status of Wife

The Constitutional Law of Japan provides that marriage shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis. But judging from the cases which are brought before the Family Courts, it is doubtful whether wife enjoys in reality equal rights with husband as provided for in the Constitution. This question is raised, particularly in connection with the distribution of property (*alimony*) in case of a divorce suit againsts wife. To begin with, it should be pointed out that the system for property distribution (*alimony*) in divorce cases in Japan (Article 768 of Civil Code of Japan) is of great significance in enhancing wife's status but the application of the system by the family court is imperfect. What is imperfect about the system is, first of all, that the absolute amount in property distribution is very small.⁽⁸⁾ Of course, up to date most cases regarding property distribution have been solved through the mediation procedures of the family court and only few have been solved by the judgment of district and family courts. Consequently, when mutual agreement among the parties concerned.....the outstanding characteristic of mediation procedures of the family court...is considered, it would be too much to say that the court should be held entirely responsible for the fact that the absolute amount involved in property distribution is small. But mutual agreement in the procedures of mediation which is different from consultation between the genuine persons concerned (Article 786 III of Civil Code of Japan) will be affected by the view of the court through persuasion and recommendation of the mediation commission. In at extreme case, it is never impossible that the court will take steps to declare the

failure of the mediation against the persons who refused to accept the court's view. Thus, one of the reasons why the absolute amount of property distribution is small is that the family court, particularly the mediation commission, has only inadequate knowledge of the property distribution system.

Japan's property distribution system (*alinomy*) is based on the alimony system of the United States but there has been a divergence of views among scholars on the *raison d'être* of the system in Japan. Some scholars argue that the system aims at supporting a partner after divorce. Others are of the opinion that the system purports to make up for the loss of heirship by the partner or to distribute property for inheritance of lifetime. Still others maintain that the system aims at either liquidating matrimonial life or giving consolation money. It is unnecessary now to criticize each of these views but whichever view may be taken, the extent of knowledge about the status of wife will have a great bearing on her right to claim property distribution. If the status of wife is considered to be subordinate to that of husband, the amount paid will necessarily be small. On the other hand, if wife is considered as having an equal status with husband and as playing an equal part in matrimonial life, the amount will be larger. Especially, when wife's position is considered as having a nature of liquidating matrimonial life, how the household work of wife is evaluated will have an immediate and great effect on the distribution of property. Consequently, the fact that only a small amount of money is paid to wife in property distribution shows that the system is not fully appreciated.

Despite the fact that the legal position of wife has been greatly raised, it is regrettable that the system is not applied properly enough because it has great defects in dealing with wife's right to claim property distribution. However, it is often pointed out that the main reason why wife obtains only a small share of property is that the parties concerned who come to the family court are those who are more or less below the middle class and husbands themselves belong to a class which is not economically wealthy. This explanation contains some truth. But it is deplorable that no efforts are being made to ensure that a considerable portion of husband's property will be distributed to wife according to

his financial conditions. A judicial precedent in the United States provides that the amount of alimony paid to an innocent wife reach one-third of husband's property and income. Sometimes, the amount reaches as much as half of husband's property and income. If property distribution is made in the form of a continuous payment, alimony will be paid at the above-mentioned rate until wife's death or until she marries again.⁽¹⁰⁾ It is doubtful whether the Japanese family court is making such efforts. There is a view that the reason why wife gets a small share in property distribution is that she is at fault. Such a view is based on the fact that in a divorce case, wife compelled to accept a small share of property because of her lack of qualifications. Then, what is the criterion for judging the qualifications and faults of wife in this school of thought? It will be a gross mistake if the qualifications and faults of wife are judged on the basis of the conventional thinking that wife must be subordinate to husband. Thus, the sense of the judge and mediation commission members at the family court becomes a problem. I have the impression that mediation commission members are quite aged on the average. I do not mean that all aged persons are always possessed of outdated beliefs or outlooks. What I am afraid of is the fact that since aged members of mediation commission tend to have a sense of the old period, it will be pretty hard for them to adjust themselves to the changes unless they are men of sufficient caliber. But I do not wish here to go too far on this problem, because I believe that this problem will be thoroughly discussed by family court officials.

The second problem of the property distribution system which arises from lack of understanding of the status of wife is the inadequacy of considerations for the execution procedure. The compulsory execution system in Japan is considered as a procedure completely separate from the procedure of judgement. Moreover, the procedure is entrusted with the bailiff by the creditor on a voluntary basis. This means that the bailiff does his job on a commission basis and that this procedure involves a fatal defect to weak and small creditors. Moreover, the execution system applies equally to the right of claim for property distribution and no special considerations are provided for. As a result, in most

cases wife who is entitled to claim property distribution, no matter how small the amount may be, will lack means to resort to execution against her infidel husband. To meet this criticism, a legal step has been taken recently to the effect that the family court can recommend debtors to pay their debts and can impose civil penalty (*Kwaryo*) on those who fail to obey the recommendation. This step is not a compulsory execution but rather a psychological one. In addition, the family court is also taking a lukewarm attitude toward imposition of fine on debtors. This mild step was taken ostensibly to maintain the unified character of the compulsory execution system but there is nothing to justify the demand that the system should always have a unified character. Particularly, the compulsory execution system will not be affected in its substance even if the legal step was taken to have the family court exercise its right against debt in the family affairs. Is it too much to say that the reason why the court's execution right has not been made into law may be due to the fact that the Japanese National Diet has been controlled by male members, especially by those men who are conservative-minded?

Although wife enjoys an equal position with husband before law, the actual social and economic organizations give husband a much higher position than wife. The system of property distribution which was established to narrow the differences of economic position between husband and wife is not implemented satisfactorily due to lack of knowledge of wife's labor in household affairs. There is evidence that wife's position is not recognized as sufficiently as it should in Japanese society. To rectify this situation, there is no other way left but for women to exercise their political powers. And it is not impossible for them to guide public opinion through their solidarity without canvassing for seats in the National Diet.

(8) The decided amount to be paid through the mediation of the family courts of Japan and the continuous period of the marriage as of 1949 follow:

Period of Intermarriage	amount paid	None	¥10,	¥30,	¥50,	¥100,	¥200,	¥300,	¥500,	¥1-	More than	Oth- ers
			000	000	000	000	000	000	000	million	¥1-million	
Six months	8	—	—	2	1	1	3	—	—	—	—	—
One year	25	2	4	12	3	3	—	—	—	—	—	1
Three years	28	4	2	7	3	4	4	—	2	—	—	1

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Five years	40	8	3	8	10	6	1	1	2	—	—	1
Ten years	69	9	1	7	15	15	7	4	4	2	1	4
20 years	72	10	4	5	11	14	9	1	4	1	—	13
more than 20 years	29	6	1	1	2	4	4	4	2	1	—	4
Total	271	39	15	42	45	47	28	10	14	4	1	26

(9) In recent years, several judicial precedents were made at lower courts of Japan but there were no wide differences in the amount made between the lower courts and the family courts mentioned in the above list. The lower court judicial precedents merely showed that the sentences were given for the distribution of ¥ 100,000 or ¥ 200,000 properties.

(10) See my article on "The alimony for the divorce case in the United States," page 3 of volume 24 of The Civil and Commercial Laws Magazine (published in Japan).