Chapter 18
Making Sense of the Best
Interest of Children in
Vulnerable Family Relationships

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The aftermath of divorce or separation of a couple with children profoundly affects the lives of all those who used to live together as a family. In Japan the current legislation admits child custody for either of the parents at divorce, and it is usually mothers who become the custodial parents living together with child. Differently from many other societies the joint custody system has not been introduced to Japan, and some people (legal experts, researchers and activist citizens mainly of fathers’ rights movement) in Japan are activating the discussion about legal reform for introducing joint custody to Japan. It is even argued that the regular contact of non-residential parent to child based on joint custody system can be regarded as a common sense in the Western industrialized societies (Aoki, 2011, p. 5). However, I take the view that there is no guarantee that the joint custody linked to regular and frequent contact of non-resident parent to child would always be the almighty solution for child care after divorce in Japan.

This research has nothing to do with the misandry that would lead to treat unfairly men in issues of parental rights or responsibilities of child care. The main concern in this research is that of children’s well-being, that is, the question how to make sure the life security and sound development for children even under vulnerable family relationships after divorce or separation of their parents. True, several industrialized societies have incorporated joint custody system in family law since the early 1990s, soon after the United Nations Convention on Child’s Rights came into force in 19901. However, it is recently reported that the joint custody system has been facing challenges in its implementations, because the realities in parents’ collaboration for the best

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interest of child after divorce or separation have not fully met what would originally be expected from “joint” custody (e.g., Fehlberg et al., 2011). In the meantime, those who welcome joint custody to Japan have selectively provided the positive information of joint custody without referring to the critical reviews on joint custody among Western scholars. I would like to emphasize the research ethics that urges scholars to refrain from misusing their experts’ knowledge, insights and opinions for manipulating and misleading the public opinion.

It is meaningful to bear in our mind that “The best parenting arrangement can depend on the individual circumstances of each family.” In other words, it would be a risky presumption that one size fits all, regardless of whether the custody system in family law in respective societies is single or joint. In this sense, I regard it very important in Japan to carefully examine where children’s well-being are not secured enough in current legal and social frameworks. The strengths and weakness of both single custody system and of joint custody system need be studied, rather than jumping to joint custody without preparing for human and financial resources necessary for supporting children after divorce.

Any policy responses to the issues on child custody after divorce have the long-term impacts on the whole life of children as well as that of adults. Policy failure in the matters of child custody, on the other hand, is associated with the grave risk of causing adverse childhood experiences to many innocent children. Their mental health would seriously be damaged, which might shadow more than one generation as several child psychiatrists have pointed out. Facing such realities in which couples with children in Japan end up with divorce more often than before, how can we secure children’s development and well-being after separation of their parents? Decision- and policy-makers need to carefully consider the consequences of their decisions in the long-term as well as in the shorter term. Children keep growing up no matter what their living environment and family relationships are like, and when they have grown up, most likely they themselves will be involved in family life.

Here is the point of departure for one of my current research projects entitled “the comparative study on child custody issues: policy proposals for securing children’s development and well-being after separation of their parents”.

The concept of child custody itself has the broad contents concerning a whole life of child and his/her healthy development, and the focus in current debates on custody system in Japan is often placed on the contact of non-custodial (non-resident) parent to child. In this context there is the risk that the contact to child and the best interest of child are mixed up, and that the child’s right to contact his/her parents is replaced by the parental right to contact child. In the Japanese debates about child custody the perspective to parental “responsibilities” on child care after divorce is not necessarily prevalent, and there is the risk of prioritizing parents’ self-centered wish over needs of child. Such understanding on the nature of child custody derives from the adults-centered approach to child care that is still dominant in Japan, although this approach is becoming out of date in the light of the U.N. Convention on the Rights of Child.

The hierarchical view on parents/adults-children relationships in Japanese family has prevented the promotion of child’s rights and the protection of child against risks of adverse childhood experiences. To respect for child’s dignity and opinion and to treat a child as an individual are rather incompatible with the age-hierarchy embedded in parents-child relationships. Under the circumstances where there is little awareness of the boundaries of individuals between child and parents and where child is regarded as such an immature citizen-to-be whose opinion, will and wishes are not to be taken seriously, the Convention of the Rights of Child remains to be a dead letter. The ultimate goal of child custody is to assure the sound development of child despite...