

Printer friendly

E-mail this article.

Tuesday, July 18, 2006

Parents' rights a demographic issue

By COLIN P.A. JONES
Special to The Japan Times

With recent news that the country's fertility rate hit a new historical low in 2005, the government will doubtless consider more policies to encourage Japanese people to have more children.

What seems missing from much of the debate on the subject, however, is the role of fathers. Japanese men appear to get a bad deal when it comes to family. On the one hand, they are expected to be the traditionally stoic salarymen. But they are also now expected to be "modern" fathers -- to change diapers and perform other parental duties, which many Western men take for granted. Many Japanese fathers now regard such childrearing activities as a natural part of their daily lives. The government also encourages even more fathers to spend more time and energy with their children.

The problem is that the Japanese legal system cannot (or will not) protect this investment when a marriage fails (or when there is no marriage to start with -- fathers have virtually no rights to children born out of marriage). Family courts will almost always award custody to mothers. A 2002 manual written for family court personnel includes a chapter on custody decisions that gives "mothers should get custody" as the only clearly articulated guideline.



Undergraduate Degrees:
International Business
Interior Design
Fashion
Media Production
Visual Communication
Criminal Justice

AND: MBA in
Business Administration

AMERICAN INTERCONTINENTAL UNIVERSITY WELCOMES INTERNATIONAL STUDENTS
*Earn Your Degree in Less Time,
Start Your Career Sooner*

AMERICAN INTERCONTINENTAL UNIVERSITY
Buckhead Campus

JT Books



An Integrated Course in Elementary Japanese containing grammar exercises, listening practices, practice for kanji, and more!



Please visit
[GENKI-ONLINE!](http://www.genki-online.com)

This is in spite of both a constitutional provision calling for gender equality in family law matters, as well as a similar mandate in the family court procedural statute.

Some fathers would probably be able to live with their ex-wives having custody if they could only see their children regularly, but there are no meaningful visitation rights in Japan. The country's Supreme Court has effectively declared that it is "not negatively disposed" to visitation -- if both parties agree to it. Yet some lawyers actually recommend that visitation not be allowed until a divorce is finalized, which means fathers can go for months without seeing their own children. And if a mother (or rare custodial father) opposes visitation there is not much that the court system can do. Even if visitation is agreed to and ordered by a court, it is usually not enforceable: there are few serious sanctions for ignoring family court orders (a U.S. State Department Web site warns that compliance with Japanese family court orders is effectively voluntary).

The lack of enforceability means that the parent who creates a status quo first will likely win in litigation, the courts not being able to do much other than ratify what has already happened. This may be one reason why both fathers and foreigners of either gender may often seem particularly disadvantaged in custody litigation. Most divorces are initiated by women, meaning they will have the opportunity to create a new status quo. And in an international marriage, the Japanese parent is also likely to have an advantage in acting first.

Lack of enforceability may also explain why it is easy to terminate visitation or to have it denied in the first place: It solves the problem for the courts (though not the parent seeking visitation) and gets a troublesome case off their dockets. And because there are no clear standards for visitation, the role a father is allowed to play post-divorce may be subject to the personal views of those hearing the case.

Men who have bathed their babies and tried to spend time with their children are often shocked to find the court system cannot or will not do anything to protect this precious relationship. Tragically, this leads some fathers to abduct their own children.



The Japan Times
Travel Service



Study Abroad



Shukan ST



A bilingual newspaper for Japanese learners of English --
[Shukan ST](#)

The Weekly



All the major international and domestic news of the past week --

[The Weekly](#)

Want to write a letter to the editor?
Ask a question about a story?

In these cases it may be mothers who are shocked when they discover that the court system often cannot reunite them with their children (just as they may be disappointed when it comes to enforcing child support). The biggest losers, of course, are the children.

For those people who have experienced such tragedies, it would be unsurprising if some concluded that there is simply too much pain and emotional risk associated with marriage and childbirth.

Japan needs more children, now -- it faces a massive demographic catastrophe. Yet when it comes to divorce, the legal system seems to tell one parent -- fathers in particular -- that they are optional.

Small wonder then, that many people choose not to get married, or to not have children if they do. The price of failure is simply too high.

Colin P.A. Jones is an associate professor at Doshisha University Law School in Kyoto.

The
Japan
Times
(C) All
rights

reserved

[SEARCH JT ARCHIVES](#) | [SITE MAP](#)

 Web japantimes.co.jp

[Subscribe](#) | [Advertising](#) | [Classified](#) | [Weekend Scene](#) | [Shukan ST](#) | [Weekly](#) | [JT Travel](#) | [JT Book Club](#) | [For JTO Advertising](#)

[Back to top](#) ▲

[Privacy policy](#)

[Advertise](#) in japantimes.co.jp.

This site is optimized for viewing with Netscape, version 7.1 or Internet Explorer, version 6.0 or above.

The Japan Times Ltd. All rights reserved.

[Click here!](#)

[Contact The Japan Times](#)

Subscribe for the latest news, sports, analysis and features from Japan and around the world.

[For detail/ more! >>](#)

SUBSCRIPTION INFO

Get a **7-day**
free trial now

