

Towards a Lifestyle-Neutral Gender-Equal Policy

—Are Work-Family Reconciling Policies Justifiable?—

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Abstract

Work-family reconciling policies have been under criticism for their lifestyle-nonneutral impact in favor of double-income households. The author examines why such policies has been required, and seeks possibilities for justification. Findings and implications are as follows. (1) Work-family reconciling policies are conservative attempts to conceal injustices in the labor market and in the family system without making any radical reform in those areas. (2) The lifestyle nonneutrality is essential to the policies because of their aim of discouraging people from career interruption to minimize the negative effect thereof. (3) There will be a room to justify the lifestyle nonneutrality, if the policies can prove effective in short period of time. (4) However, our statistical analysis reveals ineffectiveness of the policies up to now. (5) If the policies will still be ineffective in the future, it will be necessary to abandon the policies and to turnaround to a radical reform of the labor market and the family system. (6) For such decision-making process, it will be necessary to develop statistics scheme for real-time observation of the effect of the policies.

Keywords: continuity rate of full-time employment, abusive dismissal, financial provision on divorce, meritocracy, equity

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1 Work-Family Reconciling Policies under Criticism

In order to realize gender equality, it is inevitable to overcome economic inequality between those who take family responsibilities (often women) and those who do not (often men). Japan's current "gender equality" (男女共同参画) policy takes two kinds of measures¹ for this purpose: (1) in-kind care services (e.g., public daycare), and (2) a system of partial participation in workforce due to family care (e.g., care leave). The government has thus converted from the breadwinner/homemaker model to a new model of lifestyle by which women and men both continue their occupational career, regardless of their family responsibility. In this paper, we refer to this lifestyle as "reconciling lifestyle". We also refer to policies promoting this lifestyle as "work-family reconciling policies"². The above-mentioned measures —public daycare and care leave— offer typical examples of work-family reconciling policies. Such policies are the central pillars in Japan's current gender-equal policy.

There is a criticism that work-family reconciling policies are treating dual-income families preferentially. That criticism is based on a concept that a policy has to remain neutral when it comes to individual's choice in lifestyle. For instance, Akagawa [2005: 35] claims that public daycare is an unfair system for the following reasons. First, it is estimated that children at a public daycare center receive over one million yen worth of service per year. This offers them a big advantage over their counterparts receiving no public care service. Second, this advantage is owing to their parents' lifestyle. Children should not be accountable for it. Third, those without children are forced to participate to share the financial burdens for the service. Nevertheless they do not receive the service.

In fact, you can easily find evidences of a bias in favor of dual-income households in *The Basic Plan for Gender Equality* [Cabinet Office: 2005]. Within Chapter 2 of the Plan, which sets out "Basic direction of measures and concrete measures", specific directions of reconciling policy is

¹ See Tanaka [2004a; 2007]. There was another policy aiming to reduce work hours and close the gap between those who take family responsibility and those who do not [Tanaka: 2003]. Documents in the late 1990s included the statistical target of "1,800 hours of annual labor": in *Vision of Gender Equality* [Council for Gender Equality 1996], *Plan for Gender Equality 2000* [Headquarters for the Promotion of Gender Equality 1996], and the first *Basic Plan for Gender Equality* [Cabinet Office 2001]. However, this policy was later abandoned, although the target had not been reached. The second *Basic Plan for Gender Equality* [Cabinet Office 2005] includes no statistical target to reduce work hours, except a target to reduce overtime work hours.

² Note that the term "work-family reconciling policies" in this paper does not refer to a policy that aims to protect rights to work of those who take family responsibility. We limit the use of the term to those aiming at the diffusion of "reconciling lifestyle". Our definition is thus narrower than the commonsense notion is.

indicated in Section 5 “Support women and men’s efforts to harmonize work with their family and community life”. This section does not mention either neutrality toward people’s choice of life style or equity between single-income households and dual-income households³. Instead, it proposes specific measures “raising awareness in reconciliation of work and family”, “promoting social systems that enable balance work and child-rearing”, and “formulating an environment where workers can perform their roles smoothly as household members in family-caring related activities”. Although the section does include a topic “a policy of the childcare support compatible with diversified lifestyles”, this topic is about the improvement of in-kind childcare service. There is no reference to equity between the users and non-users of such service in the section.

2 Philosophy of Work-Family Reconciling Policies

(1) Why Required?

Work-family reconciling policies were established on a concept that it is desirable for people to continue to work even if they take family responsibility. According to Tachibanaki [2005: 22–23], there are five reasons why it is undesirable to give up employment.

- (1) Once they withdraw from labor market and spend time as non-laborer for several years, they can hardly find a new job after such period. Even if they found one, working conditions would be rather poor.
- (2) Withdrawal from labor market puts them at disadvantage in terms of the retirement allowance and social security systems.
- (3) When they divorce and seek a job in order to make earnings, they can hardly find one with good working conditions. There is a high possibility that they struggle against hard living or fall into poverty.
- (4) Damage to household economy is significant when their spouses lose their jobs.

³ By contrast, Chapter 2, Section 2 of the Plan [Cabinet Office 2005: 17] emphasizes that policies should be remain neutral toward choices people make, with regard to the existing provisions that are preferential to single-income households. In particular, the section states that systems of tax, social security, and wage should be reviewed from the viewpoint of neutrality toward men’s and women’s choice of their activity in the society (including home), in consideration of equity among a variety of household types [Cabinet Office 2005: 19]. Specifically, it suggests reforms of marital deduction in income tax and the third category of insured (as a spouse) in the pension scheme. Those systems have been criticized as symbols of preferential treatment to single-income household [Yokoyama 2002: 48–50, 364–378] [Shiota 2000: 134]. Quotations from the Plan thus reveal that the concept of neutrality is used in a biased manner. The concept is never been mentioned to challenge policies that are preferential to double-income household.

(5) A single-income marriage tends to establish a subservient relationship.

Among above, (4) will not be discussed in this paper, because it is not a gender inequality issue. Among the rest four, (1) and (2) are matters of privileges in employment and social security systems enjoyed by continuously employed, while (3) and (5) are issues of exploitation of housekeepers in the family system. We will examine those issues in two subsections to follow.

(2) Internal Labor Market Privilege

It widely applies that when companies attempt to secure human resources, they give their incumbent employees priority over those in the external labor market. Even when there is a job applicant more talented than a company's incumbent, the company scarcely replaces the incumbent with the applicant. Positions open only when there are vacancies. Thus, unless a company starts recruitment to fill up those vacancies, one cannot get into it [Sano 1989: 45–46]. In other words, companies have their own “labor market” segmented from the external market for a proper arrangement of personnel. Such market inside companies where personnel placements are carried out with existing employees is called “internal labor market”.

The system of internal labor market is supported by the labor laws. The amendment of the Labor Standard Law in 2003 (Law No.104) inserted a new article 18-2 to provide dismissal of workers invalid where it lacks objectively rational grounds and is inappropriate in general social terms. This provision follows “the doctrine of abusive dismissal” (解雇権濫用法理), which case laws had established by 1960s. Under this doctrine, four categories of reasons deemed to be objective and logical: (1) inability to provide labor service, loss of ability, or disqualification; (2) violation of regulation; (3) operational necessity; (4) demand for a dismissal from labor union according to a union-shop agreement. For the case (1), (2), and (3), law has generally permitted dismissals only under the following conditions: If the ground for dismissals was grave enough that there was no alternative to dismissal, and if there was almost no extenuating circumstance in favor of the worker. These strict conditions have been specifically applied to regular employees who continue to work under a system of long-term employment [Sugeno 2005: 422].

This system of the labor law has granted a privilege of workers already employed by companies. We will hereinafter refer to this privilege enjoyed by those in the internal labor market as “internal labor market privilege”.

This privilege is problematic, because it is against the principle of “meritocracy”⁴, a principle that requires the best person get the job. Under the doctrine of abusive dismissal, employers are required to take every possible means to avoid dismissal even when they want to dismiss low performers [Sugeno 2005: 422]. Obviously, it shall be deemed invalid to dismiss an employee only because of the higher talent of the applicant⁵. It is utterly unreasonable from the viewpoint of talented job seekers in the external labor market. Why workers whose productivity is lower than them can be treated favorably, only because they got into the internal labor market earlier?

Internal labor market privilege has been justified as the labor law has played a role in assuring workers’ minimum standard of living. The exercise of the right of dismissal by employers has been heavily restricted, for the reasons that workers will not be able to maintain the standard of living if they lose their positions as employees at companies. Thus, dismissals had to be restricted in order to prevent such job losses. Behind this doctrine, there was an assumption that Japanese society was oversupplied by labor, and that workers rarely transferred from one company to another. Similarly, there was also an assumption that lifelong employment and seniority-based remuneration were major practices in Japanese labor market. On this basis, courts have formulated rules that invalidate dismissals without logical or objective reasons. This is an important characteristic of Japan’s labor law [Shimoi 2003: 70].

In addition, under the Constitution and the Trade Union Law, workers are guaranteed rights to collectively bargain with their employers. By exercising such rights, workers can win working conditions favorable to them. One of remarkable examples of such accomplishment is “Densan Wage System” (電産型賃金体系), developed by the Japanese Electronic Industry’s Union (commonly known as “Densan”) that led labor movement in the 1940s Japan. Under their wage system, “life security pay” (生活保障給) accounted for a large part of the total salary. The portion was calculated based on the workers’ age and number of their family members. This held companies responsible about securing the workers’ living. This system is still widely used today. According to Kawanishi [2001: 1], nearly half of Japan’s employed labor receive wages based on some variant of Densan Wage System.

⁴ See Cavanagh [2002: 33, 43, 81] for the concept of “meritocracy”. Notice that the same concept is sometimes called “equality of opportunity” [Friedman and Friedman 1980: 212].

⁵ That applies only to court cases. Dismissals based on such reasons might be executed out of courts. Since it is difficult to bring the case into a court unless the employee has a considerable support, most cases will end out of courts. There may be a huge number of cases of such dismissals [Uchida 2004: 205–206].

(3) Intra-household Exploitation

Economists often theorize household as a sort of enterprise (Yashiro 1993: 28): a production unit that mobilizes means of production and labor. Such studies often mention specialization between wife and husband: One of them commit to work as an employed, while the other gives up employment to commit to housework. In such an economic framework, this way of specialization is for efficient production within household.

Specialization within household causes differentiations in human/social capital⁶. Those who do not take family responsibility continue to work outside of household so that they accumulate knowledge and skills required in the work, maintaining their internal labor market privilege. On the other hand, those who take family responsibility accumulate knowledge and skills required in housework, with sacrifice of labor-market-oriented investment. As a result, the former will develop labor-market-oriented capital, while the other will develop housework-oriented capital.

The point here is that there is a higher risk attached to the investment into housework, than that into labor market⁷. Labor-market-oriented human/social capital is so “liquid” that it is portable outside of household. In addition, given its convertibility to money, it can readily satisfy basic day-to-day requirements. In contrast, there is a limit in utilizing housework-oriented human/social capital, because it is effective only in a particular human relationship (e.g., emotional tie with the spouse), or at a specific lifestage (e.g., childrearing period). Additionally, regardless of how well one can perform at housework, such skill can hardly satisfy basic day-to-day requirements without production equipment and raw materials. Ultimately, one must be capable to earn money to purchase those equipments and materials to satisfy basic day-to-day requirements. Due to this difference, specialization will create a significant gap in terms of living conditions after dissolution of marriage⁸.

This gap of investment risk cannot be, in most cases, filled up in marital relationships. That is

⁶ Economists often focus on “human capital” that is usually accumulated in the forms of individual’s competency, knowledge, and skills. With regard to specialization within household, it is equally important to examine whether one can continue the employment relationship with a company on a long-term basis, and maintain one’s internal labor market privilege. Relationship like this, built between multiple actors, can be a sort of “capital”, because it brings about returns in the future, in exchange of “investment” for creation and maintenance. This is equal to so-called “social capital”. The paper use the term “human/social capital” to refer to the whole of individual’s competency, knowledge, skills, and relationship with other actors.

⁷ Following explanation is based on England and Kilbourne [1991: 173–179] and Tanaka [2004b: 9].

⁸ As the cause of dissolution of marriage, social scientists often mention divorce. However, separation by death or disappearance of a spouse can bring out the same outcome.

one of the characteristics of marriage economies distinct from general economic transactions. In a general economic transaction, high-risk investment is rewarded by high returns from the profits upon the investment. However, in marital economies, share of profits shall be “equal”, no matter how high risk one undertakes.

That is due to the social norm providing couples’ unlimited special responsibility of mutual support. The theory of couples’ responsibility of mutual support was established by family law debates under the Meiji Civil Code (Law No. 9 of 1898). A quotation from Nakagawa Zen’nosuke’s writing captures the essence of the theory: husband and wife shall share the very last piece of meat or the very last grain of rice, and shall maintain each other’s quality of life as “his or hers” [Nakagawa 1928: 192]. Nakagawa thus theorized the heavy duty of couples as the core of marital relationship. He also argued when the duty was not performed, the relationship, in practical, was already ruined [Nakagawa 1928: 195]. Since the extensive amendment in 1947 (Law No. 222), the Civil Code has stipulated husband’s and wife’s duty to live together, cooperate, and provide mutual support (Article 752), as well as the duty to share living expenses (Article 760). Today’s accepted legal theory interprets these articles, in line with Nakagawa’s theory, as providing that husband and wife shall enjoy the same level of living [Toshitani 2005: 56]. Such a duty thereby prohibits one of a married couple taking a larger share and enjoying better life than the other⁹.

However, in practice the duty is only a normative one without enforcement with punishment. There may be occasions when a couple deviates from the norm and neglects the duty. On such occasions, a husband and a wife will no longer be concerned about maintaining the quality of each other’s life. Instead, they will conduct an “intra-household bargaining”, solely to maximize his or her own utility. Will this achieve a result that rewards high-risk investment with high return? —Unfortunately, the conclusion is completely opposite.

The result of an intra-household bargaining depends on the players’ bargaining power. One with stronger bargaining power can conclude the negotiation with conditions favorable to him or her. One of the factors that define the bargaining power is “threat point”¹⁰, an expectation on the

⁹ That is also conceptualized in different ways in other field of social sciences. Economics has a concept equivalent to that: an assumption of “unitary utility function” of household [Jacobson 1998: 75]. Sociology conceptualize that as one of the basic characteristics of the modern family [Yamada 1994: 44–45].

¹⁰ This is a derivation from the theory of “cooperative game” between two players. According to this theory, players will come to agreement at John Nash’s bargaining solution [Ott 1992]. See also Carter and Katz [1997] for intra-household bargaining models.

quality of future life the player can maintain if negotiation breakdowns. Let us imagine how well divorced will live their lives (e.g., remaining single, getting remarried, or returning home to live with their parents). If they can expect that they will live a good life after divorce, their bargaining power will be strong. Contrarily, if they can expect their life going miserable after getting divorced, their bargaining power will be weak.

In an intra-household bargaining, labor-market-oriented investment raises threat point and increases bargaining power. On the other hand, housework-oriented investment drags down threat point and impairs bargaining power. If all the other conditions are the same with the two parties, the one who takes family responsibility will thus be largely disadvantaged in an intra-household bargaining.

Under current Japan's family system, those who make investment into housework cannot get returns on the basis of their investment risk. These people are exploited within household. We refer to this kind of exploitation as "intra-household exploitation". This circumstance is problematic because it is against the principle of equity, which claims outcome should be proportional to input [Inoue 1999: 15].

(4) Conservative Nature of Work-Family Reconciling Policies

It would be challenging to squarely tackle the problems of internal labor market privilege and intra-household exploitation. As have been examined, internal labor market privilege and intra-household exploitation are justified by the labor law and by the family law. These are indeed built into the life security structure through employment and family. Any attempts to squarely address and remove those negative effects will require full reviews in employment and family systems.

We can speak of work-family reconciling policies as a backdoor tactic for those issues. The policies do not aim to reform the built-in structure of privilege and exploitation in the system of employment and family. Rather, within such a structure, they attempt to direct people not to give up their internal labor market privileges. The less people quit their jobs for family responsibility, the less controversial the issues could be.

Work-family reconciling policies are appealing owing to their conservative nature. It preserves the life security system we have enjoyed through employment and family as it is. In this way,

social cost of the transformation can be kept low. In this respect, a conservative policy is superior to a radical policy that upholds sweeping reforms of the system. Work-family reconciling policies never remove injustice in the labor market and in the family system. Instead, they attempt to alter people's lifestyles to reduce negative effects arising from such issues.

The lifestyle nonneutrality thus comes about as a natural consequence of work-family reconciling policies. In order to realize the objective, the policies will need to force people to change their lifestyles. That is, people should not give up their employment for the sake of family responsibility. For this purpose, dual-income life should look more attractive than single-income life. Economically preferential treatment is a part of such efforts.

3 Work-Family Reconciling Policies as a Social Experiment

(1) Logic That Justifies the Injustice

On one hand, work-family reconciling policies neglect two injustices: internal labor market privilege and intra-household exploitation. On the other hand, the policies create another new injustice: a preferential treatment to double-income household. This puts those who take family responsibility into worse situation. They suffer not only from internal labor market privilege and intra-household exploitation, but also from the preferential treatment to double-income household. This would not be acceptable.

Justification could be possible for lifestyle nonneutrality of work-family reconciling policies, if they can be effective in short-term to raise the number of continuously employed. If an overwhelming majority of people have a continuous career in the labor market, it will be normal for married couples to form double-income household. As a result, the preferential treatment to double-income family will be redundant. For example, it will be possible to pay back those who do not use in-kind care services money equivalent to the value of the services.¹¹ As far as the preferential treatment is a temporary special measure, we thus have a reasonable ground to sacrifice short-term justice for the sake of realizing better social order in the long run.

¹¹ Norway in 1998 introduced a system to pay home care allowance to parents whose children are between one to two years old, but choose not to use publicly subsidized nurseries or use such services only for a short time. According to Kornstad and Thoresen [2006: 362], this system equalizes different forms of care services and also plays a role of redistribution to lower income families, while it has an effect of discourage mothers from working.

(2) Effectiveness of the Policies

It is the key to justification of work-family reconciling policies whether the reconciling lifestyle can become the mainstream of a society in a short period of term. In this section, we will conduct a statistical analysis on that issue. Let us review women's continuity of full-time employment at the stages of marriage, pregnancy, and childrearing. This analysis is to indicate how far the reconciling lifestyle has prevailed in current Japanese society.

Since 1990s, there have been a number of quantitative studies conducted on employment trend of women in childrearing period. The studies agreed that approximately 20% of women choose to continue regular employment in their stages of marriage, pregnancy, and childrearing [Senda 2002: 3]. To note, there has been no significant change in the ratio in this half century¹².

How does it look in today's society? Let us project Continuity Rate of Full-time Employment (CRFE) based on the data derived from the second National Family Research in Japan (NFRJ03) in 2004 conducted by Japanese Society of Family Sociology¹³. The research asked the respondents about their family members, marital status, and current/past employment.

From the data, I extracted women who have child (the first child to the third child) of 0–6 years old. Suppose that our analysis is conducted on only those who have experienced regular employment before marriage. To calculate CRFE, breakdown the data by the employment status at the point of the research. Let f , p , u respectively denote the number of regular employees, non-regular employees, and nonemployed, for the point of the research. We obtain $CRFE = f/(f+p+u)$, which indicate the rate of continuing regular employment in marriage, pregnancy, and childrearing period.

In the data, there were 63 regular employees (“常時雇用されている一般従業者”, including those on leaves). Adopting this number¹⁴, $f=63$. Among temporary or part-time employees (“臨

¹² Note that agricultural sector had experienced a drastic decline during this period. This factor has to be appropriately excluded [Tanaka: 1996; Tanaka 1999a].

¹³ The data for this secondary analysis, “The second National Family Research of Japan, NFRJ03, The National Family Research Committee of the Japan Society of Family Sociology” was provided by the Social Science Japan Data Archive, Information Center for Social Science Research on Japan, Institute of Social Science, The University of Tokyo. See Japanese Society of Family Sociology [2005] for details of NFRJ03. Method of our analysis is same as Zheng [2006: 33], except not limiting the respondents to married.

¹⁴ Theoretically speaking, some of the 63 respondents may have been not regular employee prior to their marriage. But, empirically speaking, such case may be rare. It is known that if a woman did not work

時雇い・パート・アルバイト”) and dispatched workers (“派遣社員”), 62 had experience of giving up work or leaving companies for such a reason as pregnancy, delivery, or childrearing¹⁵. Unfortunately, we cannot tell how many of them were on regular employment before marriage. We accordingly set the range of p as $0 \leq p \leq 62$. The number of those who were not employed at the point of the research, but had been regular employees in the past, was 235 (excluding those on leaves). Thus $u=235$. Based on these data, at maximum $CRFE = 63/(63+0+235) = 0.211$ where $p = 0$, while at minimum $CRFE = 63/(63+62+235) = 0.175$ where $p = 62$.

According to above results, CRFE is between 17% and 22%. That is, only a small portion of female population keep their internal labor market privilege in their marriage, pregnancy, and childrearing periods. That percentage has not increased compared with the past data in the literature. These suggest work-family reconciling policies have not yet become effective so far.

4 Toward Lifestyle Neutrality

As discussed, the work-family reconciling policies have been a failure in improving women’s continuity of full-time employment. The logic of justifying the policies as temporary special measures has turned out to be unconvincing. The policies will be inevitably abandoned in the future, if it does not change.

Given such assumption, the government has to prepare radical measures to remove internal labor market privilege and intra-household exploitation. In the following subsections, we will go over radical and lifestyle-neutral reforms that work on those injustices squarely.

(1) Meritocratic Labor Market

To abolish the internal labor market privilege, it is necessary to conduct a radical reform in the labor market system. First, legal restrictions on dismissal need to be deregulated. Also, legal system that guarantees labor unions a strong collective bargaining power has to be reviewed in order to reduce the power of workers in the internal labor market. Ultimately, we aim to establish a labor market following the principle of meritocracy.

as a regular employee prior to her marriage, she scarcely enters regular employment during the period of marriage, pregnancy, and childrearing [Tanaka 1998: 112–114; Tanaka 1999b: 45].

¹⁵ This category may well cover women who moved from regular employment to non-regular employment.

When the labor market is restructured based on the principle of meritocracy, employment is no longer means of securing one's life. Employees are always exposed to risk of dismissal, risk of having their place taken over by the one with higher competency in the external labor market.

Under today's labor market order, legal controls over dismissal have protected workers from life crisis caused by unemployment. Restrictions on dismissal have thus performed the role in place of public social security system. Therefore, in order to abolish the restrictions on dismissal, it is crucial to promote the alternate public social security [Tsuneki 2001: 27].

Developing such public social security is critically important in implementing the principle of meritocracy to the labor market. It can be achieved by further improving the current employment insurance. Alternatively, it can be achieved by a kind of "basic income" —by using tax collected at fixed-rate as funding, and provide them to all members of society [Ozawa 2002]. In any event, it is necessary to arrange a public social security system which level is at least equivalent to the current internal labor market privilege. Without overcoming this issue, people will not support the abolishment of internal labor market privilege.

(2) Equitable Distribution of "Property" at Divorce

To overcome intra-household exploitation, it is necessary to revise the framework of division of marital property at dissolution of marriage from the viewpoint of equity.

Since the amended Civil Code in 1947 (Law No. 222) stipulated "division of marital property" (財産分与) under Article 768 and 771, there has been a steady improvement in case laws. Courts have considered property obtained during the marriage as community property of the couple. Such property shall accordingly be divided into half and distributed to both parties at divorce, unless under special circumstance¹⁶. This is the established principle in case law today, with regard to the division of material marital property.

Furthermore, there have been court decisions that ordered a division of foreseeable earnings: that

¹⁶ For trends in judicial precedents, see a case study by Ootu [1990], and a comprehensive data collection by Yoshida et al [1997]. In the proposal for a revision of the Civil Code called "民法改正要綱" [Outline of Revision of Civil Code] —which was submitted to the Diet session in 1996 but was not legislated— stated that when the level of contribution to property accumulation is not clear, fifty-fifty division was deemed appropriate. Oda [2000: 37] reported results from a survey asking judges judgments on a variety of fictitious cases that it was dominant among the judges to sentence fifty-fifty division of property even for full-time housewives.

is, retirement benefits and pension to be received after divorce [Ninomiya 1998]. Also, by the reform of the pension scheme in 2004 (effective in 2007), it has been possible to split up a record of employee's pension paid during marriage at the point of divorce [Takahata 2005: 77].

The biggest problem yet to be solved with divorce is that the "property" does not include human/social capital accumulated during marriage. Suzuki [1992: 256, 281] makes a criticism on this point. He contends that at average worker's family, even if material property is fairly settled, it can never be "equal". It ignores the gap of "earning capacity" (稼得能力) between husband and wife: that is, difference in vocational status, seniority, working experiences, skills, employability, and so on. These will produce differentials in their incomes after divorce.

Suzuki advocates the establishment of a new standard for financial provision on divorce that takes into account the outcome of specialization during their marriage. Here let us take an example of a couple of X and Y. Suppose that X's earning capacity has increased during the marriage, while Y's has decreased. We thereby write Suzuki's standard in two components:

- (1) The increase in X's earning capacity during the marriage shall be divided equally, as well as material property obtained during marriage.
- (2) Spouse X is liable to pay Y training cost and living expenses necessary to recover the earning capacity. However, if Y cannot start the training during the period of the custody of a child, X shall make additional payment for living expenses for the period. If Y is deemed unable to recover the earning capacity because of old age, X will be liable to pay Y living expenses until Y's death.

Suzuki's proposal above is aimed to fill up a deficiency of family system, by establishing an equitable structure in which one can liquidate the outcome of economic activities during marriage. To explain, in addition to equally dividing material property and earning capacity gained during the marriage, it also tries to restore reduced earning capacity of one of the spouses. This is an attractive proposal, because it proposes development in the framework of family system to remove intra-household exploitation and to realize equity within household.

Nevertheless, there are following three issues remained with Suzuki's proposal. First, it does not fully cover the potential outcomes from the creation, maintenance, accumulation, and

consumption of human/social capital¹⁷ that both husband and wife commit in their marital relationship. This is because Suzuki attempted to measure increase and decrease in earning capacity with the difference between earnings at the points of marriage and at the point of divorce. We must take consideration on that differentiation in human/social capital will continue to effect in long run, both during the marital life and after divorce. Second, it suggests the loss in earning capacity to be compensated only by claiming for training costs. If the spouse's capacity is not restorable by training, the other spouse is responsible merely for the payment of two million yen of living expense annually [Suzuki 1992: 318, 320]. Third, calculation of earning capacity is technically difficult¹⁸. It will be necessary to conduct further debate around those issues.

Furthermore, various forms of dissolution of marriage, other than court divorce, should also be included in the discussion. In Japan, "consensual divorce" (協議離婚) accounts for 90% of the total number of divorce cases. In consensual divorce, law rarely intervenes between the two parties, as far as they reach at an agreement without such intervention. To realize equitable provision on divorce, a reform needs to be done so that legal intervention is institutionalized for such consensual divorces [Ueno 1993]. Also, the problem is more serious in the case of terminating marriage due to the death or disappearance of the spouse. In such cases, division of human/social capital is impossible, since it has been lost. We should take consideration of an introduction of a mandatory enrollment to insurance for the death and disappearance of spouse.

5 Policy Recommendations

As seen in 3(2), women's continuity rate of full-time employment in their marriage, pregnancy, and childrearing periods has not increased. So far, work-family reconciling policies have been a failure. Based on this fact, the paper examined the possibility of diverting the policy to lifestyle-neutral one.

However, it might be premature to conclude work-family reconciling policies as unsuccessful.

¹⁷ Employment positions determine income not only at present, but also in the future. In this respect, it is appropriate to think of employment positions as "capital", value of which increases over time, rather than mere "capacity".

¹⁸ You may think of this problem as not so big. Cases of traffic accidents have been developed techniques to determine lost earnings to lay down legal damages. It is not so difficult to calculate earning capacity based on this. However, there is a criticism that a divorce does not question the responsibility of illegal act, thus it should not be done in the same way as legal damage [Schneider and Brinig 2000: 328]. Even when Suzuki [1992: 321–322] tried to apply his own standard to the past court cases, he refrained from quantitative evaluation of the earning capacity of the divorcing parties.

The reason is that it has not been long when the policies took their full effect in 1990s, strongly advocated by the establishment of the national machinery for gender equality. It is suggested that a judgment on a viability of the policies should be suspended until further observation is done.

For this purpose, we recommend the government to develop the official statistics system in order to appropriately measure the effectiveness of the policies. The effect of work-family reconciling policies would be observed as a substantial increase in women's continuity rate of full-time employment in their childrearing stage. To conduct this analysis with high precision, it is essential to collect detailed data of their career. However, an approximation can be derived from cross-sectional data of women's employment status, marital status, and children's age. It will be ideal to institute the system of real-time observation on trends in continuity rate of full-time employment, based on the approximation from cross-sectional data on annual basis.

Equally important are to set the target and the deadline to judge the effectiveness of the policies. For example, "Increase women's continuity rate of full-time employment to 80% by the year 2030". If the target is not achieved by the deadline, the policy will need to turnaround to radical reforms with lifestyle-neutrality.

References

- [Akagawa] 赤川学 [2005] 「人口減少社会における選択の自由と負担の公平」『社会学評論』 56: 20-37.
- [Cabinet Office] 内閣府男女共同参画局 [2001]『男女共同参画基本計画』[The Basic Plan for Gender Equality] (decision by the Cabinet 2000-12-12) 財務省印刷局.
- [Cabinet Office] 内閣府男女共同参画局 [2005]「男女共同参画基本計画」[The Basic Plan for Gender Equality] (decision by the Cabinet 2005-12-27) http://www.gender.go.jp/main_contents/category/all.pdf, access 2006-09-27.
- Carter, M. R. and Katz, E. G. [1997] "Separate Spheres and the Conjugal Contract," in Haddad, L., Hodinott, J., and Alderman, H. (eds.) *Intrahousehold Resource Allocation in Developing Countries*, Johns Hopkins University Press, 95-111.
- Cavanagh, M. [2002] *Against Equality of Opportunity*. Clarendon Press.
- Council for Gender Equality [1996] *Vision of Gender Equality: Creating New Values for the 21st Century* (translation in English). <http://www.gender.go.jp/toshin-e/>, access 2007-07-23.
- England, P. and Kilbourne, B. S. [1990] "Markets, Marriages, and Other Mates," in Friedland, R. and Robertson, A. F. (eds.) *Beyond the Marketplace*, Aldine de Gruyter, 163-188.
- Friedman, M. and Friedman, R. D. [1980] 『選択の自由』(西山千明訳) 日本経済新聞社.
- Headquarters for the Promotion of Gender Equality [1996] *Plan for Gender Equality 2000: the National Plan of Action for Promotion of a Gender-Equal Society by the Year 2000* (translation in English). <http://www.gender.go.jp/koudou/english/>, access 2007-07-23.
- [Inoue] 井上和子 [1999] 『衡平理論に関する研究とその展開』 北大路書房.
- Jacobsen, J. P. [1998] *The Economics of Gender* (second edition). Blackwell.
- [Japanese Society of Family Sociology] 日本家族社会学会全国家族調査委員会 [2005]『第2回家族についての全国調査 (NFRJ03): 第1次報告書』.
- [Kawanishi] 河西宏裕 [2001]『電産型賃金の世界: その形成と歴史的意義』(新装版) 早稲田大学出版部.

- Kornstad, T. and Thoresen, T. O. [2006] “Effects of Family Policy Reforms in Norway,” *Fiscal Studies* 27: 339–371.
- [Nakagawa] 中川善之助 [1928] 「親族的扶養義務の本質 (1)」『法学新報』38(6): 1–22.
- [Ninomiya] 二宮周平 [1998] 「財産分与として将来の退職金の清算と、年金額を考慮して離婚後扶養を認めた事例 (横浜地裁判決平成 9.1.22)」『判例タイムズ』49(20): 89–94.
- Ott, N. [1992] *Intrafamily Bargaining and Household Decisions*. Springer-Verlag.
- [Oda] 小田八重子 [2000] 「離婚給付額の裁判基準」『判例タイムズ』51(16): 31–48.
- [Ootu] 大津千明 [1990] 『離婚給付に関する実証的研究』日本評論社.
- [Ozawa] 小沢修司 [2002] 『福祉社会と社会保障改革: ベーシック・インカム構想の新地平』高野出版.
- [Sano] 佐野陽子 [1989] 『企業内労働市場』有斐閣.
- Schneider, C. E. and Brinig, M. F. [2000] *An Invitation to Family Law* (2nd ed.), West Group.
- [Senda] 仙田幸子 [2002] 「既婚女性の就業継続と育児資源の関係」『人口問題研究』58(2): 2–21.
- [Shimoi] 下井隆史 [2003] 『労働法』(第3版) 有斐閣.
- [Shiota] 塩田咲子 [2000] 『日本の社会政策とジェンダー: 男女平等の経済基盤』日本評論社.
- [Sugeno] 菅野和夫 [2005] 『労働法』(第7版) 弘文堂.
- [Suzuki] 鈴木眞次 [1992] 『離婚給付の決定基準』弘文堂.
- [Tachibanaki] 橘木俊詔 [2005] 「なぜ女性活用策がうまくいかないのか」橘木俊詔 (編) 『現代女性の労働・結婚・子育て: 少子化時代の女性活用政策』ミネルヴァ書房.
- [Takahata] 高島淳子 [2005] 「年金分割: 女性と年金をめぐる問題の一側面」『ジュリスト』1282: 74–82.
- [Tanaka] 田中重人 [1996] 「戦後日本における性別分業の動態」『家族社会学研究』8: 151–161.
- Tanaka S. [1998] “Dynamics of Occupational Segregation and the Sexual Division of Labor”, Sato Y. (ed.), *1995 SSM Research Series 3: Social Mobility and Career Analysis*. 1995 SSM Research Group (c/o Seiyama K., Department of Sociology, University of Tokyo), 85–122.
- Tanaka S. [1999a] “The Rational Household Theory Examined: Does Equalization in Wages Change the Sexual Division of Labor?”, *Sociological Theory and Methods*, 14(1): 19–34.
- [Tanaka] 田中重人 [1999b] 『性別分業の分析: その実態と変容の条件』(博士論文, 大阪大学人間科学研究科).
- [Tanaka] 田中重人 [2003] 「男女共同参画社会の実現可能性」『季刊家計経済研究』60: 48–56.
- Tanaka S. [2004a] “Principal Earner and Accommodator in Household”, *Gender Law and Policy Annual Review*, 1: 25–48
- Tanaka S. [2004b] “Risky Investment”, paper read at the 20th World Congress of International Federation for Home Economics. <http://www.sal.tohoku.ac.jp/~tsigeto/04z.pdf>, access 2006-09-28.
- Tanaka S. [2006] “The Scope of Altruism”, paper read at the annual conference of International Association for Feminist Economics. <http://www.sal.tohoku.ac.jp/~tsigeto/06z.pdf>, access 2006-09-28.
- [Tanaka] 田中重人 [2007] 「性別格差と平等政策」嵩さやか・田中重人 (編) 『雇用・社会保障とジェンダー』東北大学出版会, 217–238.
- [Toshitani] 利谷信義 [2005] 『家族の法』有斐閣.
- [Tsuneki] 常木淳 [2001] 「不完備契約理論と解雇規制法理」『日本労働研究雑誌』491: 18–33.
- [Ueno] 上野雅和 [1993] 「協議離婚をめぐる」『ジュリスト』1019: 60–65.
- [Uchida] 内田貴 [2004] 「雇用をめぐる法と政策」大竹文雄・大内伸哉・山川隆一 (編) 『解雇法制を考える』(増補版) 勁草書房, 201–217.
- [Yamada] 山田昌弘 [1994] 『近代家族のゆくえ: 家族と愛情のパラドックス』新曜社.
- [Yashiro] 八代尚宏 [1993] 『結婚の経済学』二見書房.
- [Yokoyama] 横山文野 [2002] 『戦後日本の女性政策』勁草書房.
- [Yoshida et al] 吉田欣子・宇田川濱江・白井典子・岡部喜代子 (編) [1997] 『離婚給付算定ファイル』新日本法規出版.
- [Zheng] 鄭楊 [2006] 「乳幼児をもつ既婚女性の就業」澤口恵一・神原文子 (編) 『第2回家族についての全国調査 (NFRJ03) 第2次報告書 No. 2』日本家族社会学会 全国家族調査委員会, 29–43.