Symposium: 

The reform of family law

In February 2001 the Civil Code reform commission started. This group consists of legal academics who aim at drafting a bill to reform the Civil Code through discussion and research from a long range perspective. After two divisions of the laws of collateral and obligations started, the family law division was launched in December 2003. The first report from the family law division was published in the two issues, nos. 1324 and 1325 in the Jurist journal in 2006, where its member researchers discussed the issues and desirable direction of reform. Now this symposium was planned to show and discuss openly a reform bill which the family law division had made.

In the symposium of the annual meeting of the Private Law Society in 2009, four members made presentations on the bill followed by a comment by Professor Nobuhisa Segawa under the co-chair of Professors Hiroyasu Nakata and Takashi Uchida. The very brief summary of presentations is shown below. You could see the complete papers in the 1384th issue of the Jurist published in September 2009, although they are in Japanese.

1) Marriage and divorce parts presentation by Professor Atsushi Omura

This presentation focused on the matrimonial property. Professor Omura looked back to the 1996 draft outline of the Civil Code reform and then made a new proposal, by which he submitted a plan to divide the property acquired during marriage when a husband and a wife made a divorce. The proposal was not based on the current system, which is sometimes described as "potentially de facto community property," but to aim at establishing a clearer and better system. Also he proposed that there should be measures to make a matrimonial property contract more readily available for married couples to have a more freedom to choose.

2) Presentation on parent and child relationship by Professor Atsumi Kubota

Professor Kubota defines the law of parent and child as the rules to find the legal relationship between mother and child and also father and child. His basic idea is that the reform should maintain and respect the current rules established by the statute and cases. He proposed a comprehensive plan to cover the rule on the legitimate child without the presumption of legitimacy, who was born within 200 days of marriage, the rule on the child without presumption of legitimacy, who was born after the marriage is broken, and the rules to respond to the new issues of assisted reproduction.

3) Presentation on the law of adoption by Professor Fumio Tokotani

Professor Tokotani's main point was that the law should make a clear distinction between the adoption of minors and that of adults. It is possible in Japan to
adopt an adult, which aim is usually not to support him or her. He made a proposal to strengthen the regulation of the minor-child adoption, and in particular to make the procedure and requirement for the so-called "special adoption" better and more rational. More specifically he proposed that all minor-child adoptions should be done with the permission by the court, and that the "special adoption" should be more readily available and be provided with the assistance and involvement of the child welfare agency.

4) Presentation on parental rights by Professor Noriko Mizuno

Professor Mizuno began her presentation with the criticism against the current roles and division of labor between the judiciary and the executive branch of government. She made a proposal on the basis that we had to realistically rely on the executive branch rather than the judiciary for the time being. Specifically she argued that the family law should give a choice of joint custody for illegitimate children and also for those in the divorce proceedings. In addition, she proposed that the law should provide a measure to respond to child custody battles and more effective measures to prevent abuse of parental rights including child abuses.