The first graduating class of 1949 had only 134 trainees, of which 72 became judges; 44, prosecutors; and 18, practitioners. The following table shows changes in professional choices in every tenth year and in the most recent two years (number of women in parentheses):

Year	Total	Judges	Prosecutors	Bar	Others[c]
1959	282	69	51	157	5
1969	516	84	53	374	5
1979	465	64	49	350	2
1989	470	58	51	360	1
1999	729	97	72	549	11
2005	1,158 (274)	124 (34)	96 (30)	911 (204)	27
2006	1,386 (364)	115 (35)	87 (26)	1,144 (262)	40

c "Others" include academics, civil servants, those unknown at the time of survey, etc. The increasing size of the "others" category in recent years seems to reflect a greater difficulty in finding an employment in law firms.

V. THE STRUCTURE OF THE LEGAL PROFESSION IN THE COMMON LAW: ENGLAND AND THE UNITED STATES

ENGLAND

The machinery of justice in England has been undergoing radical changes in the last fifteen years or so. The two branches of the legal profession—barristers and solicitors—were characterized by rules and practices of medieval origin which aimed at protecting the interests of the guilds rather than serving the public interest.[7] At some point, it was inevitable that the profession would have to face the challenges of the market. As to judicial organization, the Human Rights Act 1998 contributes decisively to making certain features of the English judiciary untenable, such as the fusion of executive, legislative, and judicial powers in the Lord Chancellor's office and the ambiguous position of the Appellate Committee of the House of Lords.

As far as the legal profession is concerned, the two branches have lost some of their most peculiar features, and have consequently come closer to each other though they have not been unified. Following the Courts and Legal Services Act 1990, and the Access to Justice Act 1999, barristers no longer enjoy their monopoly over the right of audience before the superior courts, which in turn means that they have lost also their monopoly on appointments to the bench. At the same time, they are no longer prevented from direct contacts with clients.[8]

As to solicitors, also their monopoly on conveyancing has been swept away after centuries by the winds of liberalization of the legal profession: see § 34–37 of the CLSA.

7. See Michael Zander, Lawyers and the Public Interest: A Study in Restrictive Practices (1968).

8. The relevant provisions are § 17 and §§ 31–33 (as amended by § 36 of the Access to Justice Act 1999) of the Courts and Legal Services Act 1990.

The twilight of the welfare state has brought about a gradual demise of the Legal Aid and Advice schemes, for which England had been celebrated since 1948. In its place, § 58 of the Courts and Legal Services Act 1990, as amended by § 27 of the Access to Justice Act 1999, have introduced conditional fee agreements ("CFA"). Consider whether a conditional fee agreement is compatible with the principle of equality of arms in that it exposes a defendant to a higher cost of risk whenever a claimant chooses to be represented on a CFA basis.

Zuckerman on Civil Procedure: Principles of Practice 1054–1056 (2nd ed. 2006).

A CFA usually takes the following form. The lawyer agrees not to charge the client any fee in the event of the client being unsuccessful. At the same time, the lawyer agrees with the client a normal hourly fee plus a success fee, in the event of the client being successful in the litigation. The lawyer recovers the hourly fee and the success fee from the unsuccessful party. A CFA would still leave the client liable for the other party's costs, if the client is unsuccessful. The client may also be liable for the expenses that his own lawyers have incurred on his behalf to the extent that they are not recoverable from the other side. To protect himself from such risks the client normally takes out *an after the event* insurance policy (ATE), under which the insurer undertakes to pay the insured litigation liabilities. ATE premiums are recoverable from the losing party, alongside the lawyer's hourly fee and success fee. * * * The availability of CFA representation has improved access to justice [in those areas of litigation in which they are easily available]. However, the fairness of the scheme is far from obvious.

Note on Developments in England

Certain results of the liberalization process are already clearly visible, among them the fact that legal services are now being delivered by a number of other professionals such as legal executives, licensed conveyancers, and patent agents. However, more changes seem to be on their way. A White Paper was published by the Secretary of State for Constitutional Affairs and Lord Chancellor in October 2005, "The Future of Legal Services: Putting Consumers First" and a Draft Legal Services Bill (Cm. 6839) was presented to Parliament in May 2006.

With regard to the judicial organization, the major changes concern the abolition of the Appellate Committee of the House of Lords, and the establishment of a new Supreme Court in its place, the reform of the historic office of the Lord Chancellor, and the new approach to judicial selection.[9] As to the Lord Chancellor's office, it is clear that the Human

9. See Chapter III, Organization of the Courts, for a discussion of the Supreme Court of the United Kingdom.

Date of the decision	1995.07.05
Case number	1991(Ku)No.143
Reporter	Minshu Vol.49, No.7 at 1789
Title	Decision on the share in the inheritance of an illegitimate child
Case name	Case of special appeal against the decision to dismiss the appeal against the decision on the partition of estate
Result	Judgment of the Grand Bench, dismissed
Court of the Second Instance	Tokyo High Court, Decision of March 29, 1991
Summary of the decision	The first part of the qualifying proviso of Article 900, subparagraph 4 of the Civil Code is not in violation of Article 14, paragraph 1 of the Constitution (there are concurring opinions and dissenting opinions)
References	Article 14, paragraph 1 of the Constitution, Article 900 of the Civil Code
Main text of the judgment	The present appeal is dismissed. The cost of appeal shall be borne by the appellant.
Reasons	On the grounds for appeal presented by the counsels

The argument of the counsels can be summarised as follows: the first part of the qualifying proviso of Article 900 (hereafter the Provision), subparagraph 4 of the Civil Code which determines the share in inheritance of a child who is not legitimate (hereafter illegitimate child) as half that of the legitimate child is against Article 14, paragraph 1 of the Constitution.
1 Article 14, paragraph 1 of the Constitution provides for equal treatment under law. It is intended to prohibit discrimination without a reasonable ground. Differentiation in the legal treatment on the ground of the difference in economic, social, and other various factual relations concerning individuals is not against this provision, insofar as the differentiation is reasonable (Judgment of the Supreme Court, Grand Bench, May 27, 1964; Minshu 18-4-676, November 18,1962; Keishu 18-9-579).
As a prerequisite of examining this issue, the system of inheritance in Japan is reviewed in the following.
1) The system of traditional family inheritance (katoku-sozoku) was abolished and the system of joint inheritance was introduced by the Law on the Partial Amendment of the Civil Code (Law No.222, 1947), based upon Article 24, paragraph 2 of the Constitution which provides that laws regulating marriage and inheritance etc. should be enacted on the basis of individual dignity and the essential equality of men and women.
Concerning the scope of heirs, the current Civil Code provides that the spouse of the deceased is always an heir (Art. 890), and children of the deceased are also heirs (Art.887) and thus makes it a rule that the spouse and children are heirs. The Code further provides that if there is no children or a person who subrogates the child, the lineal ascendant and the siblings become the heirs of first and second rank respectively (Art.889). The Code also provides for the division of the estate in cases where there are multiple heirs (Art.900, hereafter, statutory shares), and if, among the joint heirs, there is a person who had accepted a gift by testament from the deceased (special beneficiary), this person's share is the remaining amount after deducting this amount from the statutory share (Art.903).
Thus, the deceased may determine the share of joint heirs by testament, but also may give all or part of the assets to the heirs or a third party by testament (Art.964). However, this cannot be effected against the provisions on the statutory reserved portion as provided in articles 1028 and 1044 (qualifying proviso to Art.964), and those who are entitled to such portion may claim the reduction of gift by testament which is against these provisions (Art.1031).
The heirs have a choice of accepting inheritance or not. An heir must fully or conditionally accept the inheritance or waive it within three months of the time he or she learned of the commencement of the inheritance (Art.915).
Article 906 sets out the criteria for the division of the estate in cases of joint inheritance and provides that in dividing the estate, the kinds and nature of the assets and rights which are included in the estate, the age, profession, mental and physical state of health and circumstances of living of each heir should be taken into consideration. Joint heirs may agree on the division of the estate by negotiation (Art.907, para.1), and if they fail to reach an agreement, may request the family court to divide the estate (ibid., para.2).
On the other hand, the deceased may determine the means of dividing the estate by testament, or prohibit division for up to five years of the beginning of inheritance (Art.908).
2) The share of the spouse was altered in the way provided by the current Article 900, subparagraphs 1 to 3 by the Law on the Amendment of the Civil Code and the Law on the Family Adjudication of 1980 (Law No.51, 1980). The share of the spouse, where the spouse and child are joint heirs, was altered to one half of the estate (previously one-third), where the spouse and a lineal ascendant of the deceased are joint heirs, two-thirds (previously, one-half), and where the spouse and the siblings are joint heirs, three-quarters (previously, two-thirds).
Also by this amendment, a system of contributory portion was introduced. Thus, the newly inserted Article 904-2, paragraph 1 provides that if, among the heirs, there is a person who made a special contribution to the maintenance of or increase in the assets of the deceased by way of providing work and service for the deceased's business, or proprietary contribution, providing of caring and nursing for the deceased, the estate to be divided equals the assets which the deceased had at the time of the beginning of inheritance reduced by the portion of contribution as determined by the agreement of all heirs. This person's share is the statutory or testamentary share plus the portion of contribution. Paragraph 2 of the same provision provides that if the heirs failed to reach an agreement, or are unable to negotiate, the family court may, upon the request of the person who made the contribution as provided in this provision, determine the portion of contribution by taking into consideration the tim e, means, and extent of contribution, the amount of the estate and all other circumstances. By this system, those who made a

special contribution to the maintenance of or increase in the deceased's assets are allowed to receive inheritance above statutory or testamentary share, and thus substantial fairness in inheritance is ensured.
3) As described above, the Civil Code has been amended in accordance with the social change, and has various provisions on the inheritance of the assets of the deceased. Article 900 which provides for statutory shares is merely one of these provisions; it does not make it mandatory to have the estate divided in accordance with the statutory shares. On the contrary, despite the provisions on statutory share, the deceased may choose to determine the share by testament. Heirs who do not wish to accept inheritance may waive inheritance. In cases where the share is discussed between the heirs, the estate does not necessarily have to be divided in accordance with the statutory share. Joint heirs may, by considering the circumstances involving each heir, allow a particular heir to receive more than the statutory share by agreement. However, in cases where the heir cannot reach an agreement on the division of the estate, the family court adjudicates the matter, and the estate has to be divided in accorda nce with the statutory shares.
In this way, provisions on statutory shares of inheritance are designed to operate in a supplementary way in cases such as where there is no designation by testament.
2 The system of inheritance determines by whom and how the assets of the deceased should be inherited. Historically and socially, there are different kinds of inheritance. When designing the system, tradition, social environment, perception of the people, and other factors have to be considered, and the system of inheritance in each country more or less reflects these factors. Furthermore, a contemporary system of inheritance is closely related to the idea of family in a given country, and the system cannot be established without considering the rules of marriage and family in that country. It should be concluded that the way the inheritance system is established is left to the reasonable discretion of the legislature by taking all these into consideration.
As mentioned above, considering the fact that provisions on statutory inheritance shares including this Provision do not provide that inheritance should always be effected in accordance with the statutory shares, but are intended to be applied in a supplementary way in cases such as where there is no designation by testament, differentiation of statutory shares of inheritance between legitimate and illegitimate children in this Provision, insofar as it has a reasonable ground in the reason of enactment and the differentiation is not excessively unreasonable in relation to the reason of enactment, and can be acknowledged as being within the scope of reasonable discretion granted to the legislature, cannot be regarded as an unreasonable discrimination which is in violation of Article 14, paragraph 1 of the Constitution.
3 While Article 24, paragraph 1 provides that marriage is concluded only on the basis of the consent of both sexes, Article 739, paragraph 1 of the Civil Code provides that 'marriage takes effect by filing in accordance with the Law on Civil Status,' and thus excludes de facto marriage and adopts marriage by law. Article 732 prohibits bigamy and declares the system of monogamy. It goes without saying that the system adopted by the Civil Code is not against the above-mentioned provision of the Civil Code.
If, as a result of the adoption of the system of marriage by law by the Civil Code, a legitimate child born from the marriage and an illegitimate child born outside the marriage are differentiated and regulated differently in the establishment of parental relationship, and common law spouses are not entitled to inheritance of the other spouse, this is something which has to be tolerated.

Summary
The aim of enactment of the Provision is understood to be to respect the status of the legitimate child who was born between spouses who are married by law, and at the same time, paying due attention to the status of the illegitimate child, grant a statutory share of one-half of the legitimate child's share in order to protect the illegitimate child, and thus balance the respect of marriage by law and the protection of the illegitimate child. In other words, since the Civil Code has adopted the system of marriage by law, insofar as the statutory inheritance share is concerned, the legitimate child has to be given preference. On the other hand, the illegitimate child was allowed some share and it was intended to protect the illegitimate child.
Since the Civil Code has adopted the system of marriage by law, the reason of enactment of the Provision has a reasonable ground. The fact that the Provision set out the statutory inheritance share of an illegitimate child at one-half that of the legitimate child cannot be regarded as excessively unreasonable in relation to the reason of enactment, and exceeded the scope of reasonable discretion granted to the legislature. The Provision cannot be regarded as an unreasonable discrimination and is against Article 14, paragraph 1 of the Constitution. The argument of the appellant cannot be accepted.
Therefore, the kokoku appeal is dismissed and the cost of the appeal shall be borne by the appellant. There are concurring opinions of justices Itsuo Sonobe, Tsuneo Kabe, Katsuya Onishi, Hideo Chikusa and Shinichi Kawai, and dissenting opinion of justices Toshijiro Nakajima, Masao Ono, Hisako Takahashi, Yukinobu Ozaki, and Mitsuo Endo, while others agree to the main text of the decision.

Concurring Opinion of Justice Kabe
I concur with the majority opinion that the appellants' argument that the Provision on the statutory inheritance share of the illegitimate child is against Article 14, paragraph 1 of the Constitution is without grounds. However, in the light of dissenting opinions which found the Provision to be unconstitutional, supplementing the majority opinion, I would like to express my views as follows.
1 The Civil Code has adopted the system of marriage by law and the system of monogamy, while prohibiting polygamy. It is known that in real life, the way men and women are associated varies and is different according to the country and the time, but the adequacy by law of the adoption of the system of marriage by law and monogamy is not questioned nowadays. The matter at issue is not the adequacy of the system of marriage by law, but the adequacy of the difference in the statutory share of

inheritance which inevitably emanates from the system of marriage by law.
A person who has assets may give them away as a gift while he or she is alive, give it by testament, or designate the share of inheritance. In order to address the situation in which such measures are not taken, supplementary provisions on statutory shares of inheritance, including the Provision exist, and the statutory heir of the first rank is the spouse of the deceased. In cases where the spouse and the child are jointly heirs, the statutory share of the spouse has been increased from one third to one half by the amendment by Law No.51 of 1980. Then who is going to inherit the remaining one half? As the leading heir, and in most cases, as a person who has to rely on the estate of the deceased for the income in the later life, this is a matter of utmost interest for the spouse. In Japan, where the primary component of the estate is residential real estate, in the light of the current state of affairs in which prices of real estate are extremely high, this only natural and understandable.
The heir who is entitled to the remaining one half of the statutory share is a child of the deceased, but in such cases, since the law has adopted the system of marriage by law on the basis of monogamy, the law naturally presupposes that the heir who comes second to the spouse is the legitimate child. In reality, the possibility that the child of the deceased is born as an extra-marital child cannot be denied, and extra-marital children should not be ruled out as heirs as children of the deceased (the view which denies inheritance to an illegitimate child is rare in Japan, though this is not the case in some foreign countries). However, it is not easily acceptable to the spouse who built a family with the deceased by marriage by law, if the share of inheritance of the illegitimate child is to be made equal to that of the legitimate child.
Against this view, there is an argument that the emergence of extra-marital (illegitimate) children cannot be prevented by differentiating the share of inheritance between legitimate and illegitimate child. However, the issue here is not an off-hand examination of a purpose/effect argument, i.e. whether making their treatment not necessarily equal (differentiating the share of inheritance) facilitates marriage by law or not. Insofar as the system of marriage by law is adopted, in a way it is a logical outcome of this system that a difference in the share of inheritance emerges between legitimate and illegitimate child.
2. Next, special reference should be made to the traditional family – ie system.
After the War, by the enactment and taking of effect of the Constitution, the system of ie based on the Civil Code before the War was abolished, and the family was transformed from the living community under the head of the family to a family centering around the married couple on the basis of the consent of both parties.
Naturally, a couple married in accordance with law does not always have a child. In such cases, the law presupposes adoption, but from the viewpoint of those who respect the continuity of blood lines, there has to be an heir of the linear descent regardless of the fact of whether this person is intra-marital child or not. The background to such a view is the system of ie. Whether it is along the male line or female line is irrelevant for this need of lineal succession. The present case is a good example.
In this case, the deceased Masa is the only daughter (the son had died earlier, and therefore, she was the only child), and in order to find the successor of the family, trial marriage was repeated for the selection of the groom for adoption. One of the heirs of the child who was born between Masa and the person who failed to reach formal marriage with her claimed a share in the estate of Masa. If there were no child between Masa and the husband who was adopted to the family, this child, who was technically extra-marital, would have succeeded the family line of Masa. This is the system of ie. This system in a way respects extra-marital child in order to maintain and continue the blood line, and it is clear, even without comparing it with the system of family in the Civil Law countries, that the problem of differentiating the share of inheritance between legitimate and illegitimate child has nothing to do with the system of ie.
3 When discussing the constitutionality of the Provision, it is necessary not only to compare the system of Japan and other countries, but also to examine whether the Provision entails violation of Article 14, paragraph 1 of the Constitution in the actual state of disputes under societal conditions in Japan. Of particular significance are the facts concerning the case which is simultaneously examined by this court ((ku) No.302 of 1993). Outline of the case is as follows:
The deceased had a daughter A and sons B and C as illegitimate children and adopted son D who is a son of his former wife, son E, and daughter F, who was born between this former wife and him. Son B married the deceased's sister, succeeded the business and is the core of the family. By the death of the deceased, there was a problem of inheritance. A,C,D, and E assigned their statutory share of inheritance to B and sided with B, F was left alone. B had a share of seven-ninths, while F had two-ninths. The original adjudication ruled in the case initiated by F on the division of the estate that B's residential home and land should not be divided, but instead, B should pay an appropriate adjustment money to F.
Against this decision, B claimed that while the statutory share of inheritance of the six children of the deceased should be equally one-sixth (three-eighteenths) of the estate, regardless of whether they are legitimate or illegitimate children, the amount of adjustment payment is based upon the calculation that F receives two-ninths of the estate, which exceeds this share. B claimed that this payment was against Article 14, paragraph 1 of the Constitution and therefore, appealed against the adjudication. Argument that the Provision is against the equality clause is not compatible with such a concrete dispute.
4. The reality of disputes in the present case and the other case is as above. In general, the actual state of association and marriage of men and women varies considerably. However, in legislative practice, even when the circumstance varies, it is needed to make a clear-cut decision on problems such as whether an extra-marital child should be given the right to inheritance, and if this is acknowledged, whether they should be treated in an equal way as marital (legitimate) children, and if there is to be differential

treatment, to what extent differentiation is allowed.
What is at issue in the present case is not the appropriateness of the legislation which denies, as can be seen in the often quoted US cases, the right of the illegitimate child (extra-marital child) as the child of the deceased, but the appropriateness of the shares of inheritance based upon the premise that the extra-marital child should naturally be one of the heirs.
In sum, by adopting the system of marriage by law based on monogamy, and on the premise that this system should be maintained, the determination of the appropriateness of the Provision which provides for the inheritance share for illegitimate child as one half that of the legitimate child as a supplementary provision, applicable in cases where gift during life, devise, or designation of shares of inheritance by the deceased does not exist, is within the scope of discretion of the legislature and in substance, does not generate the problem of unconstitutionality.

Concurring opinion of Justice Katsuya Onishi
I concur with the majority opinion that the share by statutory inheritance for an illegitimate child is not against Article 14, paragraph 1 of the Constitution as discrimination without reasonable grounds, but would like to add some reasons for it.
1 I agree with the majority opinion in that insofar as the Civil Code has adopted the system of marriage by law, it is inevitable that in rules concerning the establishment of parental relations and inheritance there are some difference between legitimate and illegitimate children. I also agree that the reason of enactment of the Provision which protects the legitimate marital relations and the family which was formed on the basis of this relation, and at the same time, intends to protect illegitimate children has reasonable grounds.
The Provision originates from a similar provision in the Civil Code before the War and has remained in force after the 1947 amendments. Under the societal conditions at those times in Japan, the Provision may have had some rationale.
2. However, since then, the social environment and the perception of the people have significantly changed.
Firstly, in the past, the estate in most cases comprised assets as means of living of the descendants, but today, when inheritance of business has become exceptional, such a meaning is about to lose effect, and it is now evident that as the meaning of family assets changes, changes can be seen in the perception of the people on the grounds (raison d' etre) of inheritance. The increasing of the share of inheritance in 1980 was in line with these changes.
Concerning the family, while several generations of people living together was the rule in the past, now, the number of children has become smaller, the age of the people in society has risen, and furthermore, the number of people who choose to stay single has increased. Some people point out that concerning marriage, common law marriage and those who prefer not to marry are on the increase.
In this way, the perception of the people concerning inheritance as well as marriage, parental relations and forms of the family have changed enormously and still continues to change.
3. Changes in the international environment surrounding Japan cannot be overlooked either.
Article 24 of the International Covenant on the Civil and Political Rights (Treaty No.7, 1979) provides that all children have the right to measures for the protection needed for their status as minors provided by the family, society, or the state without any discrimination by birth. Article 26 provides that the law guarantees equal and effective protection to all, against discrimination on any grounds including birth or other status. Article 2 of the Convention on the Rights of Child (Treaty No.6,1994) provides that children are guaranteed that the rights as provided by the Convention are respected and guaranteed without discrimination, regardless of the birth or other status.
Furthermore, by the 1960s, triggered by the increase in the number of illegitimate children, a majority of European countries had amended the law in order to make the share of inheritance of the illegitimate child equal to that of a legitimate child. Although there are countries in which, because of a strong tradition for the protection of the legitimate family, amendment of the law for equal treatment has yet to be adopted, there are also countries which, despite that fact that full equal treatment is not realised, equal treatment is pursued while balancing it with the rights of the spouse and legitimate children.
4. As seen above, circumstances concerning the Provision on the share of inheritance of illegitimate children have considerably changed in Japan as well as internationally, and the rationale behind the Provision which existed at the time of enactment has gradually lost validity. At this point, one cannot say that this exceeds the scope of reasonable discretion granted to the legislature, but if one limits the scope of examination to this Provision, the reasonableness as to the relationship with the reason of enactment has become significantly questionable.
5. On the other hand, Civil Law is based upon the adjustment and balancing of interests of individuals, and therefore, it is not appropriate to examine one interest separately from the other. Although provisions on inheritance do not concern pure proprietary interests as in commercial transactions, unlike mandatory provisions concerning civil status, ultimately, these are the provisions which determine to whom and how the assets of the deceased are assigned. Moreover the Provision is supplementary in that it is applicable only when there is no testament which reflects the deceased's clear intention.
There are different views on the raison d'etre of inheritance, but the will of the presumed heir cannot be totally ignored.
The system should be examined also from the viewpoint of how a stronger guarantee of a benefit to be granted by inheritance to one person affects the benefit the others used to have. When examining the reasonableness of the Provision, an overall consideration of the compatibility with the relevant provisions on inheritance, marriage, parental in view, including the problem of whether it is necessary to take measures to protect the interest of the spouse and others if the share of inheritance of a illegitimate child is to be made equal to that of legitimate child, is needed.
Based upon the above, while it may be appropriate to discuss the possibility of reform as a matter of legislative policy, at this moment, it cannot be concluded that the Provision is excessively unreasonable in relation to the

reason of enactment.

Justice Itsuo Sonobe concurs with the concurring opinion of Justice Katsuya Onishi.

Concurring opinion of justices Hideo Chikusa and Shinichi Kawai
We concur with the majority opinion that the Provision on the share of inheritance of an illegitimate child is not against Article 14, paragraph 1 of the Constitution, but would like to add the following.
1 In general, it is possible that provision of a law had a reasonable ground at the time of enactment, but with the passing of time, circumstances involving the subject matter change and the reasonableness of the given provision becomes questionable. The normal way of dealing with such a situation is by legislative measures, such as the amendment or abolition of the provision in question or enactment of a new law. It goes without saying that this is the most desirable way of dealing with such a situation.
2. This applies to the present case as well. It is understandable that concerning the Provision, half a century after its enactment, circumstances involving illegitimate children have changed, and an opinion which, from the viewpoint of further respecting the rights of children, casts doubts on its reasonableness has emerged. However, in order to deal with such a situation, amendment of the Provision by a legislative measure is the best way. Particularly since the Provision is an integral part of the system of inheritance and family, in order to amend it, the effect the amendment may have on related provisions and the compatibility with these provisions should be considered in the light of the entire system of inheritance and family; if necessary, other provisions should be amended or newly introduced at the same time. In addition, handling of inheritance matters based upon the Provision has been going on for many years and still continues. Presumably, preparation for the near future is being made on the same basis. Therefore, if the Provision is to be amended, the determination of the time of its taking effect and the scope of application must be examined carefully by taking into consideration the effect the change may have on the practice. All these can be achieved more properly by legislative activities of the Diet. In this way, changes in the perception of the general public can be reflected on the legislative process. It wi ll also be possible to convince them of the goal of the amendment as well as the necessity of the amendment and to make these widely known.
3. However, if the reasonableness of a particular provision of law has been lost in a significant way, and has reached the level that in the light of Article 14, paragraph 1 of the Constitution, it cannot possibly be tolerated, its application must be immediately excluded by the court declaring that the given provision is unconstitutional without waiting for legislative measures to be taken. However, in relation to this Provision, it cannot be said that it has reached such a stage.

Dissenting opinion by justices Toshijiro Nakajima, Masao Ono, Hisako Takahashi, Yukinobu Ozaki, Mitsuo Endo (Justice Ozaki gives a supplementary opinion to the dissenting opinion)

1 We are of the opinion that the qualifying proviso to the first part of Article 900, subparagraph 4 of the Civil Code (hereafter, the Provision) which determines the statutory share of inheritance of an illegitimate child to be one half that of the legitimate child is against Article 14, paragraph 1 of the Constitution and therefore is null and void, and that the original decision should be quashed.
2. (The system of Inheritance and the Criteria of Constitutionality)
Although the system of inheritance is an outcome of an overall legislative policy which has taken into consideration various social conditions and balancing of interests of the members of the family, there is a constitutional limit to legislative discretion, and it is a matter of course that it can be reviewed from the viewpoint of constitutionality.
Article 13 provides at the beginning that 'all people are respected as individuals,' and as a corollary, Article 24, paragraph 2 provides that 'on matters concerning inheritance, and family, laws should be enacted upon the basis of the dignity of individuals and the essential equality of men and women.' This should be fully respected when examining the constitutionality of a law related to family, including inheritance.
The fact that Article 14, paragraph 1 of the Constitution provides that 'all people are equal under law, and shall not be discriminated against on the ground of race, creed, sex, social status or social origin, in political, social or economic relations' is understood to mean that in the light of the dignity of individuals which is a fundamental idea of democracy, discriminative treatment against it should be eliminated. This provision does not prohibit all discrimination; it allows differentiation based upon a reasonable ground in accordance with the nature of the matter. What is reasonable should be examined in the light of the nature of the matter. In the present case, what is at issue is the constitutionality of determining the statutory share of an illegitimate child to be one half that of the legitimate child, although they are children of the same deceased. The case does not directly involve spiritual freedom, but the determination of reasonableness of discrimination at issue in the Pro vision basically depends on where the emphasis should lie – whether the attribute of the illegitimate child as part of the married family or as an outsider should be stressed, or the equal status as an individual of the illegitimate child as a child of the deceased should be stressed. Therefore, this determination shall be made in accordance not only with the existence or non-existence of reasonableness as in cases involving proprietary rights. Instead, examination of the existence of a higher level of reasonableness in relation to the reasonableness of the purpose of the law itself and its substantial relation with the means of achieving it is required. However, in this case, even the existence of simple reasonableness cannot be found.
3. (Unreasonableness of the Provision)
Concerning the reasonableness of the Provision, the majority opinion seems to presuppose that since the Civil Law adopts the system of marriage by law, the differentiation between a legitimate child born from intra-marital relations and an illegitimate child born from extra-marital relations emerges, and that there is a reasonable

ground to favour the former in contrast to the latter in determining the statutory share of inheritance.
There is no disagreement as to the purpose of the law to respect marriage, but to find the differentiation in the share of statutory inheritance to be reasonable means that the emphasis is laid on the attribute of the illegitimate child that he or she is not part of the married family and the differentiation is justified by this fact. This is not compatible with Article 24, paragraph 2 of the Constitution, which provides that the respect for individual should be the basis of legislation in inheritance, as mentioned above. While it is the deceased who is responsible for the birth of an illegitimate child, the child has no responsibility, and his or her status cannot be altered by their intention or efforts. Discriminating by law against an illegitimate child, who is by no means responsible for the birth, on the ground of birth is in excess of the purpose of legislation, i.e. the respect for and protection of marriage; there is no substantial relationship between the purpose of the law and the mea ns of achieving it, and therefore, it cannot be found to be reasonable.
The majority view that the purpose of the enactment of the Provision is to protect the interest of illegitimate children and that it thus has a reasonable basis does not coincide with the real effect the Provision has on society. The Provision is part of the Civil Code which is the fundamental law on individuals' life and family relations, and although it is not mandatory, it has a normative force and should be understood to reflect the basic idea of the law on illegitimate children. Even considering the fact that the Provision concerns the area of inheritance, the fact that the share of statutory inheritance of an illegitimate child is set at one-half that of the legitimate child is one of the significant causes creating the perception in the society that illegitimate children are inferior to legitimate children. If the purpose of the legislation of the Provision is to protect illegitimate children, although it may have been compatible with the environment in the society at the time of enactmen t, at least it is not compatible to the present state of the society, and lacks reasonableness.
4. (Changes in the legislation on illegitimate children, adoption of treaties, and the unreasonableness in the contemporary period)
It is naturally possible that a law the purpose of which was regarded as reasonable and its purpose and means compatible at the time of enactment, later, with the changes in the perception of society, general trends of legislation in foreign countries, developments in legislative reforms within Japan, and ratification of treaties, now has come to be regarded as having lost the reasonableness of its legislative purpose and the compatibility of the purpose with the means. In order to determine its constitutionality, together with the purpose of legislation at the time of enactment, changes in the facts which serve as the basis of legislation as well as the content of the treaties subsequently ratified should be taken into account.
Although there was some opposition to this Provision at the time of its enactment, as indicated by the majority opinion, the purpose of the legislation was to protect marriage. At that time, it was common in other countries to differentiate between illegitimate children and legitimate children in inheritance by law. However, since then, particularly since the 1960s, the general trend of legislation in foreign countries has been to amend the law and to treat them in an equal way in the legal system including inheritance on the ground that differentiating between legitimate and illegitimate children is unreasonable.
Also in Japan, the Office of Counsellors of the Civil Law Bureau of the Ministry of Justice, based upon the discussion at the sub-committee on family law of the Civil Law Committee of the Legislative Advisory Council, published a tentative draft of a reform programme which included an amendment to the effect that the share of illegitimate children be made equal to that of legitimate children, since the Provision was questionable in the light of the idea of equality under law. This was not transformed into a bill, but at present, another draft programme of reform with a similar content has been published and the legislative activities are continuing.
Concerning international treaties, Article 26 of the International Covenant on the Civil and Political Rights which Japan ratified in 1979, provides that all people are equal under law, and enjoy the right to equal protection without any discrimination. For this goal, the law prohibits all kinds of discrimination, and guarantees equal and effective protection to all, against discrimination on any grounds including birth or other status.' Article 2, paragraph 1 of the Convention on the Rights of the Child, which Japan ratified in 1994, provides that the signatory countries shall respect and ensure that all children within their jurisdiction the rights provided by the Treaty regardless of the birth or other status of the children, their parents or statutory guardians.'
Considering the above-mentioned facts and the effect on the society which the Provision seemingly has, as well as other factors, at least at present, discriminating against illegitimate children in relation to inheritance for the purpose of respecting and protecting marriage is against the principles of the respect of individuals and their equality, lacks a substantial relationship between the purpose of legislation and means of achieving it. It is strongly questionable whether the Provision can be considered to be constitutional.
5 (Non-retrospective effect of the judgment of unconstitutionality)
Finally, it should be added that if the Provision is to be found unconstitutional, the effect of the judgment does not automatically have a retrospective effect. The Supreme Court, when deciding that a law is against the Constitution, may limit the effect of the judgment to the time after the judgment has been rendered by declaring that the judgment has no retrospective effect in cases where judgments had been rendered in the past on the premise that the given law was constitutional and valid, many people effected juristic acts on the basis of this law, there is an established relation of rights and duties, and therefore, overturning all these will harm legal stability in a significant way. We are convinced that the Provision is unconstitutional, but by expressly declaring that the effect of the decision does not have a retrospective effect on the reasons for the decision, we should maintain the validity of the judgments and agreements which presupposed the validity of this Provision.

Supplementary dissenting opinion of Justice Yukinobu Ozaki

The reason why the Provision is unconstitutional is presented in the dissenting opinion. I believe the unconstitutionality of the Provision will become even clearer by adding the following points.

1 Equality under law forms the basis of a democratic society and must be respected to a maximum extent; discrimination without reasonable grounds is prohibited by the Constitution (Article 14, paragraph 1). The Provision determines the share of statutory inheritance of an illegitimate child at one-half that of a legitimate child and thus differentiates between legitimate and illegitimate children. As the dissenting opinion pointed out, whether this is a reasonable discrimination allowed by Article 14, paragraph 1 of the Constitution or not should not be judged by the existence or non-existence of a simple reasonableness, but of a reasonableness of a higher level in the purpose of legislation and the substantial relationship between the purpose and the means of achieving it should be examined. For such examination, the level of reasonableness or necessity of the purpose of legislation itself on the one hand, and the nature, content, and extent of the rights or legal value which is to be restrained by discrimination on the other hand, should be fully considered, and whether there is a substantial link between them both should be determined.

2. The Constitution provides for marriage, but it is silent on what should be regarded as marriage. It is reasonable for the Civil Law to have selected marriage by law from among various forms of marriage. However, in relation to the purpose of legislation, among various factors which are related to marriage by law, factors which are necessary and indispensable should be differentiated from those which are not. For those which are highly necessary, it may be allowed to restrict other values protected by the Constitution. Prohibition of bigamy is an example. However, for those which are not of high necessity, other values should have preference and restriction should not be allowed.

The Provision is a supplementary provision which determines the way the estate should be divided when there is no testament. It is indeed a natural feeling of a person to leave the assets which are the fruit of his or her life to persons whom he or she loves, such as the spouse or children after the death by his or her own choice. The Civil Law respects the will of the deceased and leaves the distribution of the estate to the will of the deceased (the system of reserved share was introduced out of a different legislative consideration and will be discussed later). It is clear from the above that the Civil Law did not recognise the necessity of imposing a certain policy from the viewpoint of marriage by law on the distribution of the estate. To whom and how the estate should be distributed is related to the protection of marriage by law and the married family, but are not necessary and indispensable to them. Otherwise, the Civil Law would naturally have introduced mandatory provisions on this m atter. Thus, the very fact that the Provision is supplementary suggests that the problem of the protection of marriage by law and the married family and the provision on the share of inheritance have no direct connection. It is difficult to find that discrimination between legitimate and illegitimate children is necessary in the light of the purpose

of the enactment of the Provision, and even if there is any connection, its level is minimal.

3. The effect of discrimination provided by the Provision should also be considered. The law explicitly provides that one has only half of the right which the other has, although they are children of the same person. The only reason is because the child was born between a couple who were not married. Historically, illegitimate children had been treated as inferior, but once the system of marriage by law was adopted, they were treated as persons in the shadow and despised even more. Indeed, it is often reported that they are discriminated against in an impermissible way in entering schools, finding jobs and marriage. The original purpose of the enactment of the Provision was of course not intended to have such unjustifiable results, but still in our country, there is a strong feeling that illegitimate children are inferior. The Provision is in line with this trend, but also is used as the basis of its justification.

The significance of the effect such a discriminatory trend has on the personal development of illegitimate children is obvious. The society which we endeavour to develop is a society in which people are respected as individuals and make the effort to perfect their personality based upon the right of self-determination, and are able to develop their talent to the maximum. If one is treated as a person without full personality, a person in the shadow of society from youth upwards, is it possible to develop a full and happy personality? At least, it is a major hindrance to such development. A better society cannot be attained unless constant efforts are made to eliminate such negative aspects of the society. If the Constitution declares respect for individuals and provides for equality under law, and at the same time, facilitates discriminatory treatment which has a negative influence on the spiritual development of illegitimate children and continues to retain the provision which may serve as a j ustification of such treatment, it is an enormous contradiction.

Although there may be some benefits in the means of discrimination which the Provision set out in order to protect the system of marriage by law and the married family, it results in obstruction to a person's spiritual life. They do not bestow protection by harming fundamental and important interest of a modern society. Considering the fact that the Civil Law itself evidently takes the position that matters which scarcely involve public interest can be left to the party, this conclusion is inevitable.

4. The interest which the married family has in relation to the estate is said to be greater than that of a illegitimate child. Usually, it is argued that the family of the legitimate child has led a family life longer and thus, the affection is deeper, and has contributed more to the accumulation of the estate, and therefore, it is natural that the share of inheritance should be larger. However, each family relation is different, and it is extremely questionable whether one should rely on such a generalisation, and as a result, infringes the basic rights of others. I would dare to point out that cases where illegitimate relations emerge may be an exceptional situation to the general view. If, conceding to such generalisation, the share of inheritance of the married family should be made larger, there is a means to achieve that purpose without infringing other person's rights and

casting doubts on constitutionality. It is sufficient to use the testament.
Basically, disposal of the inheritance estate is left to the will of the deceased and even if it is disposed in a way which is against the expectation of the family of the deceased, no one can object. This is the same with the gift during life. What is decisive in the end is the will of the deceased and whether the family was linked by affection which genuinely deserves such treatment. This is the essence of inheritance, and provisions on the statutory share of inheritance are merely a means of convenience. At the time of enactment, when sufficient attention was not paid to fundamental human rights, the Provision was accepted without any serious doubt. If one considers without prejudice the fact that the Provision unreasonably discriminates against illegitimate children and the seriousness of the harm resulting from this discrimination, and, at the same time, takes into account that the benefit which is to be gained by the Provision is not related to public interest, but is of the nature which can be determined by the will of the party alone, one cannot but deny the validity of the Provision which is a cause of increasing the handicap of illegitimate children.
5. For the democratic society which we pursue, equality under law is a significant basis. Since the purpose of enactment of the Provision has little reasonableness or necessity, the resulting sacrifice is significant. Furthermore, even without the Provision, there is a means to attain the result which is suitable for specific circumstances. It is totally impossible to acknowledge substantial relationship between the purpose of enactment of the Provision and discrimination against illegitimate children. The Provision which compels a meaningless sacrifice should be regarded as being unconstitutional.

Presiding Judge

Justice Ryohachi Kusaba
Justice Seiichi Ohori
Justice Itsuo Sonobe
Justice Toshijiro Nakajima
Justice Tsuneo Kabe
Justice Katsuya Onishi
Justice Motoo Ono
Justice Toru Miyoshi
Justice Masao Ono
Justice Hideo Chikusa
Justice Shigeharu Negishi
Justice Hisako Takahashi
Justice Yukinobu Ozaki
Justice Shinichi Kawai
Justice Mitsuo Endo

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The Japan Times NEWS

NATIONAL

Bar to kids' citizenship ruled illegal

Supreme Court opens door to unwed foreign moms' children

BY JUN HONGO

ARTICLE HISTORY | JUN 5, 2008

In a ruling sure to affect thousands of others born out of wedlock to non-Japanese mothers, the Supreme Court on Wednesday granted 10 children of Filipino women the right to Japanese nationality.

Saying it led to unreasonable discrimination, 12 of the 15 justices on the top court's grand bench ruled unconstitutional a provision in the Nationality Law that states that such children can only become citizens of the mother's home country.

The children, aged between 8 and 14, were all born out of wedlock and recognized by their Japanese fathers only after they were born. Under the law, had the fathers stepped forward before birth, the children would have been deemed Japanese.

The Tokyo High Court had denied them Japanese nationality based on this stipulation in the Nationality Law. It is believed that in many cases, the Japanese fathers were married to other women when the mothers became pregnant with their children.

In overturning the high court decision, Supreme Court Chief Justice Niro Shimada ruled that the provision in the law resulted in "discrimination without any rational reason" and thus violated Article 14 of the Constitution, which stipulates equality under the law.

In finding unlawful the clause requiring that the parents be married, the ruling stated, "The disadvantages caused to the children by this biased treatment cannot be disregarded."

The case marks the eighth time the Supreme Court has found a law unconstitutional. Most recently, in September 2005, the top court ruled the election law unconstitutionally denied full voting rights to Japanese living abroad.

Following Wednesday's decision by the top court, the Diet and the Justice Ministry are expected to begin talks on revising the Nationality Law to grant full citizenship to children with similar backgrounds, estimated to number tens of thousands.

Lawyer Genichi Yamaguchi, who represented one of the plaintiffs, called the ruling "highly significant."

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"The verdict clearly acknowledged that (the law) was irrationally discriminatory," Yamaguchi told reporters after the ruling.

"I would like to achieve my dream, which can come true now that I am Japanese. I want to become a police officer," plaintiff Masami Tapiru, 10, told reporters after the ruling.

Her mother, Rosanna, also thanked her lawyers and supporters for helping secure her child's human rights.

Lawyer Hironori Kondo, who represented the family, told reporters he would contact the Justice Ministry for instructions on how to proceed with obtaining Japanese nationality for his client.

"This is a huge ruling that affects many foreign nationals residing in Japan," Kondo said, adding he expected a considerable number of children to surface and seek Japanese nationality following Wednesday's ruling.

An article in the Nationality Law, enacted in 1950, states that a child born out of wedlock to a Japanese man and foreign woman can only obtain Japanese nationality if the father recognizes paternity before the baby is born, or if the couple marry before the child turns 20.

The 10 plaintiffs' Japanese fathers, none of whom married the mother, acknowledged paternity only after their children were born. All the children have Philippine citizenship, and live with permanent resident status in the Kanto and Tokai regions.

Although the children attend local schools and speak Japanese, they do not have access to full voting rights nor can they enter or leave Japan freely, the defense lawyers have said. "It is a great discrimination to deny nationality to these children, based on the fact that their parents are not married. Such conditions cannot be controlled by the children," they argued in court.

The 10 children filed suit with the Tokyo District Court in two separate groups, arguing that the law violated their constitutional right to impartiality.

The district court ruled in favor of the children in 2005 and 2006, acknowledging that the clause "obstructs the constitutional right to equality" and has put the plaintiffs at "an immense disadvantage."

But the Tokyo High Court overturned the rulings on grounds that the Nationality Law is justified and does not interfere with the children's constitutional right to equality. The high court stated that the decision to grant nationality is "an inherent right of the state," and that it did not have the authority to award the children nationality.

The Civil Affairs Bureau of the Justice Ministry has argued in court that there are "rational reasons to the legal clause," which it said are backed by historical and cultural precedent.

The government has also said the law promotes legal marriages, adding that it would be inconsistent with the judicial duty of the court to find a law unconstitutional and involve itself with legislative matters.

Date of the judgment	2008.06.04
Case number	2006 (Gyo-Tsu) No. 135
Reporter	Minshu Vol. 62, No. 6
Title	Judgment concerning the relationship between a distinction in granting Japanese nationality caused by Article 3, para.1 of the Nationality Act which provides that a child born out of wedlock to a Japanese father and a non-Japanese mother and acknowledged by the father after birth may acquire Japanese nationality only if the child has acquired the status of a child born in wedlock as a result of the marriage of the parents, and Article 14, para.1 of the Constitution.
Case name	Case to seek revocation of the disposition of issuance of a written deportation order
Result	Judgment of the Grand Bench, quashed and decided by the Supreme Court
Court of the Second Instance	Tokyo High Court, Judgment of February 28, 2006
Summary of the judgment	1. Article 3, para.1 of the Nationality Act provides that a child born out of wedlock to a Japanese father and a non-Japanese mother and acknowledged by the father after birth may acquire Japanese nationality only if the child has acquired the status of a child born in wedlock as a result of the marriage of the parents, thereby causing a distinction in granting Japanese nationality, and in 2003, at the latest, this distinction was in violation of Article 14, para.1 of the Constitution. 2. A child born out of wedlock to a Japanese father and a non-Japanese mother and acknowledged by the father after birth shall acquire Japanese nationality if the child satisfies the requirements for acquisition of Japanese nationality prescribed in Article 3, para.1 of the Nationality Act, except for the requirement of acquiring the status of a child born in wedlock as a result of the marriage of the parents. (There are concurring opinions and dissenting opinions.)
References	(Concerning 1 and 2)Article 10 and Article 14, para.1 of the Constitution, Article 3, para.1 of the Nationality Act, (Concerning 1)Article 2, item 1 of the Nationality Act, (Concerning 2) Article 81 of the Constitution Article 10 of the Constitution The conditions necessary for being a Japanese national shall determined by law. Article 14, para.1 of the Constitution All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin. Article 3, para.1 of the Nationality Act (Acquisition of Japanese Nationality by Legitimation) A child who has acquired the status of a child born in wedlock as a result of the marriage of the parents and the acknowledgment by either parent and who is aged under 20 (excluding those who have been Japanese citizens) may acquire Japanese nationality by making a notification to the Minister of Justice, if the father or mother who has acknowledged the child was a Japanese citizen at the time of the child's birth, and such father or mother is currently a Japanese citizen or was a Japanese citizen at the time of his/her death. Article 2, item 1 of the Nationality Act (Acquisition of Japanese Nationality by Birth) A child shall be a Japanese citizen in the following cases: (i) Where the father or mother is a Japanese citizen at the time of birth. Article 81 of the Constitution The Supreme Court is the court of last resort with power to determine the constitutionality of any law, order, regulation or official act.
Main text of the judgment	The judgment of prior instance is quashed. The appeal to the court of second instance filed by the appellee of final appeal is dismissed. The appellee of final appeal shall bear the cost of the appeal to the court of second instance and the cost of the final appeal.
Reasons	Concerning Reasons I to III for final appeal argued by the appeal counsel, YAMAGUCHI Genichi 1. Outline of the case The appellant of final appeal, who was born to a father who is a Japanese citizen and a mother who has nationality of the Republic of the Philippines, a couple having no legal marital relationship, submitted a notification for acquisition of Japanese nationality to the Ministry of Justice in 2003 on the grounds that he/she was acknowledged by the father after birth, but the minister determined that the appellant had not acquired Japanese nationality due to the failure to meet the requirements for acquisition of Japanese nationality. In this case, the appellant sued the appellee, seeking a declaration that the appellant has Japanese nationality. 2. Concerning Article 2, item1 and Article 3 of the Nationality Act Article 2, item 1 of the Nationality Act provides that a child shall be a Japanese citizen if the father or mother is a Japanese citizen at the time of birth, applying the principle of jus sanguinis (the principle of granting nationality to a child based on the child's blood relationship with the father or mother) when determining the acquisition of Japanese nationality by birth. Therefore, if a child has a legal parent-child relationship with a Japanese father or Japanese mother at the time of birth, the child shall acquire Japanese nationality by birth. Article 3, para.1 of the Nationality Act provides that "A child who has acquired the status of a child born in wedlock as a result of the marriage of the parents and the acknowledgment by either parent and who is aged under 20 (excluding those who have been Japanese citizens) may acquire Japanese nationality by making a notification to the Minister of Justice, if the father or mother who has

acknowledged the child was a Japanese citizen at the time of the child's birth, and such father or mother is currently a Japanese citizen or was a Japanese citizen at the time of his/her death." Para.2 of said Article provides that "A person who has made a notification under the provision of the preceding paragraph shall acquire Japanese nationality at the time of notification." Article 3, para.1 of said Act addresses cases where either the father or mother has acknowledged the child. However, it is construed that a child born out of wedlock to a Japanese mother is to have a legal parent-child relationship with the mother by birth, and a child acknowledged by a Japanese father before birth is to have a legal parent-child relationship with the father upon birth, and in both cases, the child shall acquire Japanese nationality by birth under Article 2, item 1 of said Act. Consequently, Article 3, para.1 of said Act is practically applied only to a child who was born to a couple of a Japanese father and a non-Japanese mother having no legal marital relationship and who was not acknowledged by the father before birth.

3. Judgment of prior instance, etc.
The appellant alleged his/her acquisition of Japanese nationality under Article 2, item 1 of the Nationality Act, and also alleged that he/she had acquired Japanese nationality by submitting a notification for acquisition of Japanese nationality to the Minister of Justice, on the grounds that Article 3, para.1 of said Act, which provides that in the case of a child born out of wedlock to a Japanese father, only such child who has acquired the status of a child born in wedlock as a result of the marriage of the parents may acquire Japanese nationality by making a notification to the Minister of Justice, is in violation of Article 14, para.1 of the Constitution.
While denying the appellant's acquisition of Japanese nationality under Article 2, para.1 of the Nationality Act, the judgment of prior instance held as follows with regard to the allegation concerning Article 3, para.1 of said Act. Even supposing that the provision of said paragraph should be in violation of Article 14, para.1 of the Constitution and therefore void, this does not lead to creating a new system for granting Japanese nationality to a child born out of wedlock who only satisfied the requirement of acknowledgment by a Japanese father after birth (but does not satisfy the requirement of the marriage of the parents), nor does it cause the appellant to automatically acquire Japanese nationality. Furthermore, since the Nationality Act must be subject to strict literal construction, the court is never permitted to put an analogical or broad construction on the provisions of said Act contrary to the lawmakers' intention, and if the court, under the name of such legal construction, creates any requirement for acquisition of Japanese nationality that is not stipulated in the Act, this is equal to the case where the court performs a legislative act and therefore unacceptable. Therefore, the appellant cannot be deemed to have acquired Japanese nationality according to an analogical or broad construction of the provision of Article 3, para.1 of said Act. In conclusion, the judgment of prior instance dismissed the appellant's claim.

4. Conformity to the Constitution of the distinction in granting Japanese nationality under Article 3, para.1 of the Nationality Act
The appeal counsel can be construed to be alleging as follows. Article 3, para.1 of the Nationality Act provides that a child born out of wedlock to a Japanese father may acquire Japanese nationality only if the child has acquired the status of a child born in wedlock as a result of the marriage of the parents, and this provision causes a distinction between a child who satisfies this requirement and a child born out of wedlock who is also acknowledged by a Japanese father but whose parents have no legal marital relationship, in that the latter child may not acquire Japanese nationality even where he/she has satisfied other requirements prescribed in said paragraph (hereinafter referred to as the "Distinction"), and the existence of the Distinction is in violation of Article 14, para.1 of the Constitution. The appeal counsel further alleges that the provision of Article 3, para.1 of the Nationality Act is unconstitutional and therefore void only with respect to the part that causes the Distinction, and the appellant should be granted Japanese nationality under the remaining part of the provision of said paragraph. We therefore make examination on these points.
(1) Article 14, para.1 of the Constitution provides for equality before the law, and as this court determined in the past cases, this provision should be construed to mean that discriminatory treatment by law should be prohibited unless it has a reasonable basis that is in line with the nature of the matters concerned (See 1962 (O) No. 1472, judgment of the Grand Bench of the Supreme Court of May 27, 1964, Minshu Vol. 18, No. 4, at 676, 1970 (A) No. 1310, judgment of the Grand Bench of the Supreme Court of April 4, 1973, Keishu Vol. 27, No. 3, at 265, etc.)
Article 10 of the Constitution provides that "The conditions necessary for being a Japanese national shall be determined by law." In accordance with this provision, the Nationality Act provides for the requirements for acquisition and loss of Japanese nationality. The provision of Article 10 of the Constitution can be construed to mean that since nationality is the qualification for being a member of a particular state, and when specifying the requirements for acquisition or loss of nationality, it is necessary to take into consideration various factors concerning each state, including historical backgrounds, tradition, and political, social and economic circumstances, the determination on the content of these requirements should be left to the discretion of the legislative body. However, if any distinction caused by the requirements under a law concerning acquisition of Japanese nationality that are specified based on such legislative discretion amounts to discriminatory treatment without reasonable grounds, such a situation, needless to say, raises a question of violation of Article 14, para.1 of the Constitution. In other words, where a reasonable basis cannot be found in the legislative purpose of making such a distinction even if the discretionary power vested in the legislative body is taken into consideration, or where a reasonable relevance cannot be found between the distinction in question and the aforementioned legislative purpose, the distinction is deemed to constitute discrimination without reasonable grounds and to violate the provision of Article 14, para.1 of the Constitution.

Japanese nationality is the qualification for being a member of the State of Japan, and it is also an important legal status that means a lot to people in order to enjoy the guarantee of fundamental human rights, obtain public positions or receive public benefits in Japan. On the other hand, whether or not a child can acquire the status of a child born in wedlock as a result of the marriage of the parents is a matter that depends on an act relating to the personal status of the parents, which cannot be affected by the child's own intention or efforts. Therefore, it is necessary to deliberately consider whether or not there are any reasonable grounds for causing a distinction in terms of the requirements for acquisition of Japanese nationality based on such matter.

(2)(a) Under the system for acquisition of Japanese nationality based on notification prescribed in Article 3 of the Nationality Act, a child born to a couple of a Japanese father and a non-Japanese mother having no legal marital relationship may acquire Japanese nationality by making a notification to the Minister of Justice if the child satisfies the requirements prescribed in para.1 of said Article, including acquisition of the status of a child born in wedlock as a result of the marriage of the parents and the acknowledgement by either parent (hereinafter referred to as "legitimation"). This system was introduced upon the revision to the Nationality Act by Act No. 45 of 1984 for the purpose of supplementing the basic principle of said Act, jus sanguinis, by achieving a balance (in treatment) with a child born in wedlock to a Japanese father and a non-Japanese mother who may acquire Japanese nationality by birth. Article 3, para.1 of the Nationality Act does not allow a child born out of wedlock to a Japanese father and a non-Japanese mother to acquire Japanese nationality just by satisfying the requirement of being acknowledged by the father after birth, but it allows acquisition of Japanese nationality only when legitimation has taken place. This limitation is the cause of the Distinction. The primary reason that this provision was included in the Act can be construed as that in the case of a child acknowledged by a Japanese father after birth, when the child has acquired the status of a child born in wedlock as a result of the marriage of the parents, the child's life is united with the life of the Japanese father and the child obtains a close tie with Japanese society through his/her family life, and therefore it is appropriate to grant Japanese nationality to such a child. Furthermore, at the time when the revision was made to the Nationality Act, many states that adopted the principle of jus sanguinis made both acknowledgment and legitimation as requirements for granting nationality to children born to fathers who are their citizens. This may be another reason that the Distinction was introduced as a reasonable one.

(b) Even where a child is born to a Japanese citizen as his/her parent by blood, if the child does not acquire Japanese nationality by birth, he/she is likely to subsequently develop a close tie with a foreign state which is his/her state of nationality. It is construed that Article 3, para.1 of the Nationality Act, while keeping the basic principle of the Act, the principle of jus sanguinis, provides for certain requirements that can be the indexes by which to measure the closeness of the tie between the child and Japan, in addition to the existence of a legal parent-child relationship with a Japanese citizen. In order to achieve this purpose, requirements such as legitimation were introduced and this caused the Distinction. We should say that the aforementioned legislative purpose itself, which is the cause of the Distinction, has a reasonable basis.

Furthermore, according to the socially accepted views and under the social circumstances at the time when the provision of Article 3, para.1 of the Nationality Act was established, there may have been adequate reasons to consider that in the case of a child born to a Japanese father and a non-Japanese mother, the fact of the legal marriage of the parents would show the existence of the child's close tie with Japan developed through his/her family life with the Japanese father. In light of the aforementioned trends in the nationality law systems enforced in foreign states at the time of introduction of the provision of said paragraph, a certain reasonable relevance can be found between the provision that requires legitimation in addition to acknowledgment for granting Japanese nationality, and the legislative purpose mentioned above.

(c) However, since then, along with the changes in social and economic circumstances in Japan, the views regarding family lifestyles, including the desirable way of living together for husband and wife, as well as those regarding parent-child relationships have also varied, and today, the realities of family life and parent-child relationships have changed and become diverse, as seen by the fact that the percentage of children born out of wedlock in the total number of newborn children has been increasing. In combination with these changes in the socially accepted views and social circumstances, as Japan has recently become more international and international exchange has been enhanced, the number of children born to Japanese fathers and non-Japanese mothers has been increasing. In the case of children whose parents are couples of Japanese citizens and foreign citizens, the realities of their family lifestyles (e.g. whether or not the child lives with a Japanese parent) as well as the views regarding a legal marriage and the ideal form of parent-child relationship based thereon are more complicated and diverse than in the case of children whose parents are both Japanese citizens, and in the former case, it is impossible to measure the degree of closeness of the tie between children and Japan just by examining whether or not their parents are legally married. Taking all of these points into consideration, it does not always match up to the realities of family life of today to determine that a child born to a Japanese father and a non-Japanese mother has a close tie with Japan to a sufficient extent for granting him/her Japanese nationality only after the Japanese father became legally married to the non-Japanese mother. In addition, it seems that other states are moving toward scrapping discriminatory treatment by law against children born out of wedlock, and in fact, the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, which Japan has ratified, also contain such provisions to the effect that children shall not be subject to discrimination of any kind because of birth. Furthermore, after the provision of Article 3, para.1 of the Nationality Act was established, many states that had previously required legitimation for granting nationality to

children born out of wedlock to fathers who are their citizens have revised their laws in order to grant nationality if, and without any other requirement, it is found that the father-child relationship with their citizens is established as a result of acknowledgement.
In light of these changes in social and other circumstances at home and abroad, we should say that it is now difficult to find any reasonable relevance between the policy of maintaining legitimation as a requirement to be satisfied when acquiring Japanese nationality by making a notification after birth, and the aforementioned legislative purpose.
(d) On the other hand, as explained above, the Nationality Act adopts the principle of jus sanguinis and, while taking a stance of granting Japanese nationality to a child by considering that the existence of a legal parent-child relationship with the father or mother who is a Japanese citizen indicates that the child has a close tie with Japan, provides that a child shall acquire Japanese nationality if the father or mother is a Japanese citizen at the time of birth (Article 2, item 1). As a result, not only a child born in wedlock to a Japanese father or mother but also a child born out of wedlock and acknowledged by a Japanese father before birth and a child born out of wedlock to a Japanese mother are to acquire Japanese nationality by birth, whereas only a child born out of wedlock who is acknowledged by a Japanese father but has not acquired the status of a child born in wedlock as a result of legitimation, although such a child is also born to a Japanese citizen as his/her parent by blood and has a legal parent-child relationship with a Japanese citizen, is unable to acquire Japanese nationality by birth or even by making a notification under Article 3, para.1 of said Act. We should say that due to such distinction, a child born out of wedlock who satisfies only the requirement of being acknowledged by a Japanese father after birth, alone, is subject to considerable discriminatory treatment in acquiring Japanese nationality.
Considering that acquisition of Japanese nationality means a lot to people in order to enjoy the guarantee of fundamental human rights and other benefits in Japan, we should say that the disadvantages that children would suffer from the above-mentioned discriminatory treatment cannot be overlooked, and we must say that we can hardly find reasonable relevance between such discriminatory treatment and the aforementioned legislative purpose. In particular, between children acknowledged by Japanese fathers before birth and those acknowledged after birth, it is difficult to find a difference in general in terms of the level of the tie with Japanese society developed through their family life with Japanese fathers, and it is also difficult to explain the reasonableness of the policy of applying the above-mentioned distinction when granting Japanese nationality from the perspective of the level of the tie with Japanese society. In addition, under the Nationality Act that adopts the principle of jus sanguinis, if, despite the fact that children born out of wedlock to Japanese mothers can acquire Japanese nationality by birth, children born out of wedlock who satisfy only the requirement of being acknowledged by Japanese fathers after birth are not allowed to acquire Japanese nationality even by making a notification, we should say that such a situation is somewhat inconsistent with the basic stance of the Act from the perspective of gender equality.
(e) The Nationality Act provides that such a child born out of wedlock as mentioned above, although he/she also has a legal parent-child relationship with a Japanese citizen, alone, is not allowed to acquire Japanese nationality by birth or by making a notification unless the marriage of the parents---an act relating to the personal status of the parents that the child can do nothing about---has taken place. If we also take into consideration the circumstances described in (c) and (d) above, we must conclude that in order to achieve the legislative purpose of granting Japanese nationality only to persons who have a close tie with Japan, this provision applies a means that goes far beyond the bounds where reasonable relevance with such legislative purpose can be found, even if the discretionary power vested in the legislative body is taken into account, and as a result, said provision should be deemed to cause unreasonable discrimination.
(f) It is true that there is a way for a child born out of wedlock to a Japanese father and a non-Japanese mother and acknowledged by the father after birth, to acquire Japanese nationality through simplified naturalization prescribed in Article 8, item 1 of the Nationality Act. However, since naturalization depends on the discretion of the Minister of Justice, and even a person who satisfies the requirements prescribed in said item may not automatically acquire Japanese nationality, we cannot deny the lack of reasonable relevance between the Distinction and the aforementioned legislative purpose by regarding simplified naturalization as a substitute for acquisition of Japanese nationality.
We should add that if Japanese nationality is to be granted to a child by reason of acknowledgment by a Japanese father before legitimation takes place, fictitious acknowledgement is likely to occur in an attempt to acquire Japanese nationality. The necessity to prevent acquisition of Japanese nationality by way of a fictitious act may be another reason for the Distinction. However, even though such likelihood exists, the policy of making it a requirement for acquisition of Japanese nationality to acquire the status of a child born in wedlock as a result of the marriage of the parents cannot necessarily be said to have reasonable relevance with the necessity to prevent acquisition of Japanese nationality by way of a fictitious act, and it is difficult to accept this likelihood as a reason to overturn our conclusion mentioned in (e) above.
(3) For the reasons stated above, we should conclude that although the legislative purpose itself from which the Distinction is derived has a reasonable basis, reasonable relevance between the Distinction and the legislative purpose no longer exists due to the changes in social and other circumstances at home and abroad, and today, the provision of Article 3, para.1 of the Nationality Act imposes an unreasonable and excessive requirement for acquiring Japanese nationality. Moreover, since the Distinction involves another distinction described in (2)(d) above, we must say that it causes a child born out of wedlock who satisfies only the requirement of being acknowledged by a Japanese father after birth to suffer considerably disadvantageous discriminatory treatment in acquiring

Japanese nationality, and even if we take into consideration the discretionary power vested in the legislative body when specifying requirements for acquisition of Japanese nationality, we can no longer find any reasonable relevance between the consequence arising from the Distinction and the aforementioned legislative purpose.
Consequently, it can be construed that the Distinction, by the time when the appellant submitted a notification for acquisition of Japanese nationality to the Minister of Justice, at the latest, had lost reasonable relevance with the legislative purpose, even if the discretionary power vested in the legislative body is taken into account.
Therefore, we must conclude that at the time mentioned above, the Distinction amounted to unreasonable discrimination, and the provision of Article 3, para.1 of the Nationality Act was in violation of Article 14, para.1 of the Constitution in that the provision caused the Distinction.

5. Whether or not it is permissible to grant Japanese nationality to the appellant on the presupposition of the unconstitutional condition arising from the Distinction
(1) As explained above, we must say that the provision of Article 3, para.1 of the Nationality Act, in that it causes the Distinction, has been in violation of Article 14, para.1 of the Constitution since the time mentioned above, at the latest.
However, if, just because Article 3, para.1 of the Nationality Act imposed an excessive requirement for acquiring Japanese nationality and thereby caused the Distinction, the whole part of the provision of Article 3, para.1 of the Nationality Act is made void in order to eliminate the unconstitutional condition arising from the Distinction, and the chance to acquire Japanese nationality by making a notification is denied even for a child who is legitimated (hereinafter referred to as a "legitimated child"), this would ignore the purpose of said Act that introduced the system for acquisition of Japanese nationality after birth in order to supplement the principle of jus sanguinis, and it can hardly be imagined as the lawmakers' reasonable intention, and therefore we must say that such legal construction is unacceptable. Therefore, it follows that while presupposing the existence of the provision of Article 3, para.1 of the Nationality Act under which a legitimated child may acquire Japanese nationality by making a notification, it is necessary to give relief to people who are subject to unreasonable discriminatory treatment due to the Distinction, thereby correcting the unconstitutional condition arising from the Distinction.
(2) From this viewpoint, we examine how this problem can be corrected. In light of the demand of equal treatment under Article 14, para.1 of the Constitution and the basic principle under the Nationality Act, the principle of jus sanguinis, there is no choice but to enforce the provision of Article 3, para.1 of said Act which allows acquisition of Japanese nationality after birth while keeping the principle of jus sanguinis, in terms of its purpose and content, upon a child born out of wedlock to a Japanese father and a non-Japanese mother who satisfies only the requirement of being acknowledged by the father after birth. In other words, by considering that even such a child is allowed to acquire Japanese nationality by making a notification if he/she satisfies the requirements prescribed in said paragraph except for the requirement of acquiring the status of a child born in wedlock as a result of the marriage of the parents, it may be possible to put a constitutional and reasonable construction on the provision of said paragraph as well as the provisions of said Act, and we should say that such construction is also appropriate from the perspective of opening a path to direct relief for people subject to unreasonable discriminatory treatment due to the Distinction.
The aforementioned construction is drawn by, in order to correct the unconstitutional defect arising from the Distinction, avoiding making void the provision of Article 3, para.1 of the Nationality Act as a whole and putting a reasonable construction on it while excluding the part that imposes an excessive requirement and causes the Distinction, and the outcome of this construction does not go beyond granting Japanese nationality under the same requirements as those applied to legitimated children. This construction is in line with the purpose and objective of the provision of said paragraph in that it is intended to grant Japanese nationality to a child born out of wedlock after birth if the child satisfies the requirement under the principle of jus sanguinis (having a legal parent-child relationship with a Japanese citizen), and also satisfies other requirements that are the indexes by which to measure the child's close tie with Japan (e.g. the father is currently a Japanese citizen). If it is argued that this construction is impermissible because it is equal to the case where the court creates a new requirement for acquisition of Japanese nationality that is not stipulated by law and performs a legislative act that should originally be performed by the Diet, we should say that such an argument is wrong even if we take into consideration the possibility that there is any other reasonable option for legislation to determine requirements for acquisition of Japanese nationality.
Consequently, we should conclude that a child born out of wedlock to a Japanese father and a non-Japanese mother and acknowledged by the father after birth shall be allowed to acquire Japanese nationality under Article 3, para.1 of the Nationality Act if the child satisfies the requirements prescribed in said paragraph, except for the requirement of acquiring the status of a child born in wedlock as a result of the marriage of the parents.
(3) According to the facts legally determined by the court of prior instance, we can find that the appellant satisfies all of the requirements prescribed in Article 3, para.1 of the Nationality Act that should be satisfied based on the legal construction mentioned above. Therefore, it is appropriate to construe that by submitting the notification for acquisition of Japanese nationality to the Minister of Justice, the appellant has acquired Japanese nationality pursuant to the provision of Article 3, para.1 of the Nationality Act.

6. Conclusion
As mentioned above, the appellant is found to have acquired Japanese nationality pursuant to the provision of Article 3, para.1 of the Nationality Act. The determination of the court of prior instance, which dismissed the appellant's claim on grounds that are contrary to this reasoning, misconstrues the provisions of Article 14, para.1 and Article 81 of the

Constitution and the provisions of the Nationality Act. The appeal counsel's arguments are well-grounded in alleging such misconstruction, and the judgment of prior instance should inevitably be quashed. According to our holdings shown above, the appellant's claim is well-grounded, and the judgment of first instance that upheld the claim is justifiable, and therefore the appeal to the court of second instance filed by the appellee of final appeal should be dismissed.

Therefore, the judgment has been rendered in the form of the main text by the unanimous consent of the Justices, except that there are a dissenting opinion by Justice YOKOO Kazuko, Justice TSUNO Osamu, and Justice FURUTA Yuki and a dissenting opinion by Justice KAINAKA Tatsuo and Justice HORIGOME Yukio. There are also concurring opinions by Justice IZUMI Tokuji, Justice IMAI Isao, Justice NASU Kohei, Justice WAKUI Norio, Justice TAHARA Mutsuo and Justice KONDO Takaharu, respectively, and an opinion by Justice FUJITA Tokiyasu.

The concurring opinion by Justice IZUMI Tokuji is as follows.
1. Article 3, para.1 of the Nationality Act requires "marriage of the parents" for granting Japanese nationality to children who were born to Japanese citizens as their fathers or mothers and are ineligible for application of Article 2 of said Act, thereby excluding children born out of wedlock who are acknowledged by fathers after birth but who do not satisfy the requirement of "marriage of the parents" from the scope of children eligible to acquire Japanese nationality. This exclusion constitutes discrimination in granting Japanese nationality against children born out of wedlock and acknowledged by Japanese fathers after birth, by reason of their social status as children born out of wedlock and the gender of their Japanese parents, i.e. the fact that it is their fathers (not their mothers) that are Japanese citizens.
The interest affected by this discrimination is Japanese nationality, a fundamental legal status, and the reasons for the discrimination are social status and gender, which are indicated as prohibited reasons for discrimination under Article 14, para.1 of the Constitution. Therefore, in order to determine that this discrimination is not in violation of said paragraph, the legislative purpose of Article 3, para.1 of the Nationality Act must be important for the State of Japan, and there must be actual and substantial relevance between the legislative purpose and the means to achieve the purpose, i.e. requiring the acquisition of the status of a child born in wedlock as a result of the "marriage of the parents."

2. The legislative purpose of Article 3, para.1 of the Nationality Act is to, in accordance with the principle of jus sanguinis, grant Japanese nationality to children who were born to Japanese citizens as their fathers or mothers and are ineligible for application of Article 2 of said Act, on condition that they have close connections with Japanese society. This legislative purpose per se can be deemed to be justifiable.

3. Article 3, para.1 of the Nationality Act, as a means to achieve the legislative purpose mentioned above, provides that Japanese nationality shall be granted only to "a child who has acquired the status of a child born in wedlock as a result of the marriage of the parents and the acknowledgment by either parent," thereby excluding children born out of wedlock and acknowledged by fathers after birth from the scope of children eligible to acquire Japanese nationality.
However, the requirement of "marriage of the parents" cannot be fulfilled by the will of the child or the Japanese father alone, and it gives rise to children who are born to Japanese citizens as their fathers but unable to acquire Japanese nationality by the will of their own or their fathers alone. On the other hand, children born out of wedlock and acknowledged by Japanese fathers after birth, even through they have not acquired the status of a child born in wedlock as a result of the "marriage of the parents," have legal parent-child relationships with their fathers and have the duty to support each other, and in this respect, they actually have connections with Japanese society. The closeness of the connections with Japanese society of such children born out of wedlock is not so different from that of children born out of wedlock to Japanese mothers, who are eligible for application of Article 2 of the Nationality Act, or of children born out of wedlock and acknowledged by Japanese fathers before birth. Furthermore, in the case of children whose parents are in common-law marriage or those who are in effect in the custody of their fathers, it is difficult to say that the connections with Japanese society of children born out of wedlock and acknowledged by Japanese fathers after birth are substantially inferior to such connections of children born in wedlock. In fact, these children born out of wedlock have the potential to develop their connections with Japanese society upon being acknowledged by fathers. In today's Japanese society where family relationships are becoming more diversified, I must say that it is a stereotyped and rigid way of thinking to consider that the connections between the aforementioned children born out of wedlock and Japanese society are weak unless they are supported by the "marriage of the parents."
Consequently, I can hardly find actual and substantial relevance between the aforementioned legislative purpose and the means to achieve this purpose, i.e. granting Japanese nationality only to, among children acknowledged by Japanese fathers after birth, those who have acquired the status of a child born in wedlock as a result of the "marriage of the parents."
In conclusion, the discrimination in granting Japanese nationality created by Article 3, para.1 of the Nationality Act against children born out of wedlock, which constitutes discrimination by reason of the children's social status and the parent's gender, cannot be deemed to have sufficiently justifiable grounds, and therefore should inevitably be deemed to be in violation of Article 14, para.1 of the Constitution.

4. I believe that the appellant should be granted Japanese nationality by applying the provision of Article 3, para.1 of the Nationality Act, except for the part requiring the "marriage of the parents."
The gist of the provision of Article 3, para.1 of the Nationality Act is to grant Japanese nationality to children

who were born to Japanese citizens as their fathers or mothers and are ineligible for application of Article 2 of said Act, and the "marriage of the parents" is merely one of the requirements to be satisfied to achieve this. Therefore, said gist of the provision should be maintained to the greatest possible extent even if the part requiring the "marriage of the parents" is unconstitutional, and this is what the lawmakers would have intended. Furthermore, applying Article 3, para.1 of the Nationality Act in this manner conforms to the gist of Article 24, para.3 of the Covenant on Civil and Political Rights which provides that "Every child has the right to acquire a nationality" and that of Article 7, para.1 of the Convention on the Rights of the Child.
However, application of Article 3, para.1 of the Nationality Act in the manner mentioned above may not be permissible when there is a clear probability that the Diet, from the legislative perspective, will not maintain the provision of said paragraph, with the part requiring the "marriage of the parents" removed therefrom. The most possible alternative to removing the part requiring the "marriage of the parents" from the provision of Article 3, para.1 of the Nationality Act may be repealing said Article as a whole. However, this option will bring about more serious discrimination than that under the existing Act against children born out of wedlock and acknowledged by Japanese fathers after birth, and it seems unlikely that the Japanese Diet will choose this opinion, despite its obligation to comply with Article 24 of the Covenant on Civil and Political Rights which provides that every child shall be protected from any discrimination as to birth or the parent's gender. The next possible alternative may be also imposing the requirement of "marriage of the parents" on children born out of wedlock to Japanese mothers, who are eligible for application of Article 2 of the Nationality Act, and children born out of wedlock and acknowledged by Japanese fathers before birth. The Diet is also unlikely to choose this option because it will bring about undue discrimination against all children born out of wedlock, which is contrary to the principle of equality under the Constitution. There is also another possible alternative, imposing a new requirement of proving a child's close connections with Japanese society, such as "having been born in Japan," "retaining a domicile in Japan for a certain period of time," or "sharing the same family budget with a Japanese citizen." This option imposes an additional requirement from a viewpoint that is different from the principle of jus sanguinis under the Nationality Act, which determines a child's connections with Japanese society basically from his/her legal parent-child relationship with a Japanese citizen, and therefore it cannot be said to be highly probable that the Diet will choose this opinion. After all, it cannot be said that there is a clear probability that the Diet, from the legislative perspective, will not maintain the provision of Article 3, para.1 of the Nationality Act, with the part requiring the "marriage of the parents" removed therefrom, and it can be construed that it is more in harmony with the lawmakers' intention to apply the provision of said paragraph, while excluding the part requiring the "marriage of parents," thereby granting Japanese nationality to children born out of wedlock and acknowledged by Japanese fathers after birth.
It is of course within the Diet's legislative discretion to revise, in the future, the provision of Article 3, para.1 of the Nationality Act in line with the Constitution, but until then, the provision of said paragraph should be applied while excluding the part requiring the "marriage of the parents." When the court applies the provision of Article 3, para.1 of the Nationality Act, while excluding the part requiring the "marriage of the parents," it means that the court construes and applies the provision of said paragraph according to the principle of equality under the Constitution, and such application of law is not equal to the creation of a new law by the judiciary but is necessarily permissible as the judiciary's role.

5. The majority opinion construes the aforementioned discrimination to be unconstitutional in terms of the relevance between the legislative purpose and the means to achieve it, and it has a basic framework of judgment in common with my opinion. With regard to application of the provision of Article 3, para.1 of the Nationality Act to the appellant, the majority opinion is in line with my opinion presented in 4 above. Therefore, I agree with the majority opinion.

The concurring opinion by Justice IMAI Isao is as follows.
I am in agreement with the majority opinion. However, in light of the dissenting opinion concerning the issue determined by this court as mentioned in 5 above (whether or not it is permissible to grant Japanese nationality to the appellant), I would like to present a concurring opinion with regard to what is a judicial relief that is desired in cases where a provision of a law is partially unconstitutional.
1. The dissenting opinion argues as follows: The Diet, among children acknowledged by Japanese fathers after birth, allows those legitimated to acquire Japanese nationality (hereinafter simply referred to as "nationality") by making a notification but has not yet made a law to grant nationality to those not legitimated (hereinafter referred to as "non-legitimated child(ren)") (this fact can be referred to as non-existence of legislation or inaction on legislation), and even when this violates Article 14, para.1 of the Constitution, if the courts allows acquisition of nationality by non-legitimated children as well, it is equal to the case where the court, by a judgment, creates a new requirement for granting nationality that is not stipulated in the Nationality Act, and it is beyond the bounds of judicial power and therefore impermissible.

2. The purpose of vesting the court with the power of judicial review on constitutionality is to protect rights and interests of citizens by repealing an unconstitutional law, or in other words, to give relief to people whose rights or interests are infringed by an unconstitutional law. If the provision of a law that is alleged to be void is a provision that imposes a criminal penalty on citizens or deprives citizens of their rights or interests, there is basically no special problem because the issue of unconstitutionality can be solved just by regarding the provision as being ineffective and avoiding its application.
A problem will occur in cases where, as in this law case, the provision of a law in dispute is a provision that grants rights or interests to citizens. In such case, if the provision as a

whole is made void, the grounds for granting rights or interests will be lost, which makes it not at all possible to grant the rights or interests concerned. This construction may apply in some cases. However, where the provision to grant rights or interests to citizens specifies two requirements for granting the rights or interests, Requirements A and B, and stipulates that the rights or interests shall be granted only to such persons who satisfy both requirements (which means, as construed in the opposite way, that the rights or interests shall not be granted to those who satisfy only Requirement A), if the court finds it contrary to the principle of equality and therefore unconstitutional to require citizens to satisfy Requirement B in addition to Requirement A in order to acquire the rights or interests, the question would be whether or not it is permissible to grant the rights or interests to those who satisfy only Requirement A. In such case, by taking into consideration various factors such as the framework of the law as a whole, the reason for judging the provision to be unconstitutional, and the appropriateness of the consequences, it can be construed that the part of the provision concerning Requirement B alone should be made void (Requirement B should be ignored), and as a result, those who satisfy only Requirement A are also eligible to acquire the rights or interests granted under the provision, and I think such construction is sufficiently valid as a constitutional construction of law.

3. The Nationality Act adopts the principle of jus sanguinis, and according to this principle, the Act specifies three types of methods of acquiring nationality, (i) automatic acquisition by birth (Article 2), (ii) acquisition by notification (Article 3), and (iii) acquisition by naturalization (Article 4 to Article 9). Article 2 provides that a child who satisfies the requirement that the legal father or mother is a Japanese citizen at the time of birth shall automatically acquire nationality. Article 3, as a supplementary provision of Article 2, stipulates that a child whose father by blood is a Japanese citizen but who is born out of wedlock and acknowledged by the father after birth may acquire nationality only if the child is legitimated, thereby denying the eligibility of a non-legitimated child to acquire nationality. Article 4 to Article 9 provide a child who is ineligible to acquire nationality under Article 2 or Article 3 with the chance to acquire nationality through naturalization (with permission of the Minister of Justice).
The mechanism of the system for acquisition of nationality under the Nationality Act can be summarized as follows: the Act, as a primary principle, provides that nationality shall be granted in cases where a child is found to have a legal blood relationship with a Japanese citizen, or more specifically, where a child's legal father or mother is a Japanese citizen, and Article 2 firmly holds this principle without condition, whereas Article 3 imposes an additional requirement that the child should acquire the status of a child born in wedlock as a result of the marriage of the parents (hereinafter referred to as the "legitimation requirement"). In light of such mechanism under the Nationality Act, I must say that Article 3, while holding the principle of jus sanguinis, excludes children who do not satisfy the legitimation requirement from the scope of eligible children. On this point, the dissenting opinion argues that Article 3, para.1 only provides that among children acknowledged by Japanese fathers after birth, only those legitimated may acquire nationality by making a notification, whereas with regard to the issue of whether or not to grant nationality to non-legitimated children, the Act has merely failed to have a provision to grant nationality to such children, which amounts to nothing more than inaction of legislation. However, it is obvious that by enacting the provision of Article 3, para.1 of the Nationality Act and allowing only legitimated children to acquire nationality by making a notification, the Diet has, when viewed from the opposite side, actively exercised its legislative discretion to deny nationality to non-legitimated children. It can be construed that if it is found that Article 3, para.1 discriminates non-legitimated children from legitimated children, and such discrimination is contrary to the principle of equality and therefore unconstitutional, non-legitimated children should also be granted nationality as legitimated children, and such construction is sufficiently valid as a constitutional construction of law as mentioned in 2 above.
From this viewpoint, the majority opinion can be understood as stating that the court has, by exercising its power of judicial review, tried to construe the provision of Article 3, para.1 of the Nationality Act in line with the Constitution, and finally reached a conclusion that non-legitimated children should be granted nationality as legitimated children under said paragraph, and such an argument that the court has, by doing so, created a new law beyond the bounds of the requirements stipulated in said Act is a mistaken criticism. If the court, through legal construction, seeks to eliminate the discrimination between legitimated children and non-legitimated children under the existing Nationality Act, which is contrary to the principle of equality, the court has no option but to deny the eligibility of legitimated children or recognize non-legitimated children as being eligible as legitimated children. There may be no objection to the opinion that the former option, irrespective of the validity of its consequence, can never be considered to be infringing the Diet's legislative power. In the same way, the court should also be permitted to choose the latter option.
For the reasons stated above, I believe that based on the constitutional construction of the provision of Article 3, para.1 of the Nationality Act, it is appropriate to construe that said provision means to allow a child acknowledged by a Japanese father after birth to acquire nationality by making a notification, and this construction does not infringe the Diet's legislative power.

4. Should the dissenting opinion be adopted, the unconstitutional condition that is contrary to the principle of equality would remain---among children acknowledged by Japanese fathers, legitimated children can acquire nationality whereas non-legitimated children cannot acquire nationality even if they go to court for judicial relief.
The dissenting opinion seems to consider that even though the unconstitutional condition is to remain, there is no way to solve this problem unless a legislative measure is taken, on the following grounds: Article 10 of the Constitution provides that "The conditions necessary for being a Japanese national shall be determined by law," and who

should be granted nationality is a matter that the Diet should determine through legislation. Since the Nationality Act does not provide that non-legitimated children may acquire nationality, even when the discrimination between legitimated children and non-legitimated children is contrary to the principle of equality and therefore unconstitutional, if the court allows acquisition of nationality by non-legitimated children, it is equal to the case where the court creates a new law and therefore impermissible.
However, although it is needless to say that it is in principle left to the Diet's discretion to take a legislative measure to determine what requirements should be satisfied to grant nationality, it is the court's duty to make a review on the constitutionality of the legislative measure taken by the Diet by exercising its discretionary power. Article 3, para.1 of the Nationality Act is the legislative measure taken by the Diet by exercising its discretionary power, and the court has examined it and determined that it is contrary to the principle of equality and therefore unconstitutional because the provision of said paragraph causes unreasonable discrimination between legitimated children and non-legitimated children. In such case, it is the court's duty to give protection to people who are prevented by such an unconstitutional law from enjoying protection to which they should have been entitled to enjoy, and such act of the court does not infringe the Diet's legislative power, nor can it be deemed to go beyond the bounds of the court's judicial power.

5. Some people may argue that if the court determines that nationality should also be granted to non-legitimated children, it would derive the Diet of the chance to exercise its discretionary power to add any other requirement for acquisition of nationality in lieu of the legitimation requirement, such as retaining a residence in Japan for a certain period of time, and I do not deny the possibility of such an argument. Nevertheless, even if the court puts a constitutional construction on the provision of Article 3, para.1 of the Nationality Act, which does not specify such an additional requirement, thereby granting nationality to non-legitimated children, needless to say, this does not preclude the Diet at all from exercising its discretionary power to create a new law that specifies, in lieu of the legitimation requirement, any constitutional requirement to be satisfied by children acknowledged by Japanese fathers after birth in order to acquire nationality, and the aforementioned constitutional construction by the court never deprives the Diet of its discretionary power in legislation.

Justice NASU Kohei and Justice WAKUI Norio support the concurring opinion by Justice IMAI Isao.

The concurring opinion by Justice TAHARA Mutsuo is as follows.
I am in agreement with the majority opinion. However, I would like to give my concurring opinion with regard to the issues concerning the relationship between the acquisition of nationality and the right to receive education, and the distinction between children acknowledged before birth and those acknowledged after birth.

1. Having nationality of a certain state means being a member of the state, and people who have Japanese nationality have freedom to reside in Japan, and they are entitled to enjoy the fundamental human rights guaranteed by the Constitution, choose their occupations freely, and exercise their franchise as well as various other rights granted to Japanese citizens by law.
Whether or not a person can acquire Japanese nationality by birth or by acknowledgment and notification makes a difference in whether or not the person can automatically acquire and exercise these rights granted to Japanese citizens, and in this respect, it directly affects the person's human rights.
The chance to acquire nationality by acknowledgment and notification is granted to people aged under 20 (Article 3, para.1 of the Nationality Act), and in fact, most people who face the issue of eligibility to acquire nationality are preschool children or school-aged children as in this case. Therefore, to these people, among the rights to be granted on condition of acquisition of nationality, whether or not they can exercise the right to receive education or right to receive social security means more than whether they can acquire the franchise or freedom to choose occupations.
Article 26 of the Constitution provides for the citizens' right to receive education (para.1), and also provides for, from the opposite side, guardians' obligation to have their children receive ordinary education, while stipulating that compulsory education shall be free (para.2). In accordance with these provisions of the Constitution, the Fundamental Act of Education provides that citizens shall have the obligation to have children under their protection receive ordinary education, and no tuition fee shall be collected for compulsory education to be provided at schools established by the State or local public entities (Article 4 of the former Fundamental Act of Education Act and Article 5, para.1 and para.4 of the Fundamental Act of Education). The School Education Act also provides that guardians shall have the obligation to send their children to elementary school and junior high school (Article 22 and Article 39 of the School Education Act prior to revision by Act No. 96 of 2007, Article 16 and Article 17 of the School Education Act after revision). The Ordinance for Enforcement of the School Education Act contains various provisions, such that in order to ensure the performance of the obligation to send children to school, a municipal board of education shall, based on the basic resident register of the municipality, compile student rosters of school-aged students who have domiciles within the area of the municipality, and give a notice to guardians of children who are to reach the school age with regard to the date of admission to elementary school or junior high school, two months before the start of the next academic year (Article 1 and Article 5 of the Ordinance for Enforcement of the School Education Act).
These provisions, which are stipulated from the standpoint of the obligation of children's guardians, embody children's right to receive education guaranteed under Article 26, para.1 of the Constitution, and children accordingly have the right to receive compulsory education without fee. However, these provisions shall not apply to children who do not have Japanese nationality, and their right to receive education is recognized only through the measures taken by individual

municipal boards of education to grant admission to foreign children who wish to go to school.
In terms of social security, under the Public Assistance Act, Japanese citizens shall be entitled to public assistance (Article 2 of the Public Assistance Act), whereas foreign nationals shall not be eligible for application of said Act, and they are given assistance equivalent to public assistance only based on administrative decisions.
Thus, under the existing laws, for children like the appellant, whether or not they can acquire Japanese nationality makes a great difference in whether or not they can enjoy benefits of rights to receive education or social security.

2. With regard to the issue of whether or not Japanese nationality should be granted to children born out of wedlock to Japanese fathers and non-Japanese mothers and acknowledged by the fathers after birth (hereinafter referred to as "children acknowledged after birth"), the distinction between non-legitimated children and legitimated children under Article 3, para.1 of the Nationality Act (children acknowledged after birth shall be granted Japanese nationality only if they are legitimated as a result of the marriage of their parents), and the distinction between children acknowledged by Japanese fathers before birth and those acknowledged after birth (children acknowledged by Japanese fathers before birth shall automatically acquire Japanese nationality under Article 2, item 1 of the Nationality Act) are challenged from the perspective of whether or not they are in conformity to Article 14, para.1 of the Constitution.
The majority opinion argues that the distinction between legitimated children and non-legitimated children among children acknowledged after birth under Article 3, para.1 of the Nationality Act is in violation of Article 14, para.1 of the Constitution, and non-legitimated children may also acquire Japanese nationality if they satisfy the requirements prescribed in Article 3, para.1 of the Nationality Act, except for the requirement of "having acquired the status of a child born in wedlock as a result of the marriage of the parents."
I have no objection to the majority opinion on this point.
In addition to the distinction between legitimated children and non-legitimated children among children acknowledged after birth, I consider that the distinction between children acknowledged after birth and those acknowledged before birth is also important in relation to Article 14, para.1 of the Constitution.
Children can never know whether or not they will be legitimated, and in this respect, there is no difference between children acknowledged before birth and those acknowledged after birth. To become a legitimated child requires a legal procedure, the marriage of the parents. However, the difference between children acknowledged before birth and those acknowledged after birth comes from nothing more than the difference in terms of the time of acknowledgment, whether they are acknowledged before or after birth. As pointed out in 4(2)(d) of the majority opinion, between children acknowledged before birth and those acknowledged after birth, it is difficult to find a difference in general in terms of the level of the tie with Japanese society developed through their family life with Japanese fathers, and it is also difficult to explain the reasonableness of the policy of applying the above-mentioned distinction when granting Japanese nationality from the perspective of the level of the tie with Japanese society. From this standpoint, a conclusion can be drawn that the provision of the Nationality Act that automatically grants Japanese nationality to children acknowledged before birth while not granting Japanese nationality to children acknowledged after birth unless they are legitimated, is in violation of Article 14, para.1 of the Constitution.
If it is possible to construe, on the assumption that the provision of Article 3, para.1 of the Nationality Act is void, that the retroactive effectiveness of acknowledgment under the Civil Code (Article 784) also applies to the case of acquisition of nationality, children acknowledged after birth are supposed to acquire Japanese nationality under Article 2, para.1 of the Nationality Act retroactively as from the time of birth, which will lead to elimination of the distinction between children acknowledged before birth and those acknowledged after birth. However, such construction where the retroactive effectiveness of acknowledgment is also applicable to acquisition of nationality would bring about a question of whether or not it is appropriate to grant nationality by reason of acknowledgement to children acknowledged after birth, who have already acquired nationality of other states before acknowledgment, automatically or regardless of the intention of these children, as well as the problem of dual nationality, and it would also bring about other legal issues in various aspects. It is difficult to solve all of these problems collectively by a single method, but a solution should be sought separately by law. Such a construction that is likely to cause many legal issues should inevitably be deemed to be beyond the construction of the Nationality Act and therefore unacceptable.
Therefore, I believe that the provision of Article 3, para.1 of the Nationality Act should be construed in a limited manner, as suggested by the majority opinion, so as to construe that children acknowledged after birth who are aged under 20 may acquire Japanese nationality by making a notification to the Minister of Justice, and this construction is consistent with the entire framework of said Act and also reasonable when aiming to give relief on a case-by-case basis to the appellant and other people who also satisfy this requirement. This conclusion does not completely eliminate the distinction between children acknowledged before birth and those acknowledged after birth in that the former can automatically acquire Japanese nationality by birth whereas the latter are required to make a notification to the Minister of Justice in order to acquire Japanese nationality.
However, in the case of children acknowledged after birth, the aforementioned problems such as dual nationality exist, and requiring children acknowledged after birth to make a notification so that the children themselves (or persons who have parental authority over them) can decide whether or not to grant Japanese nationality is within the bounds of reasonable discretion of the legislative body, and such distinction will not raise an issue of violation of Article 14, para.1 of the Constitution.

The concurring opinion by Justice KONDO Takaharu is as follows.