

## Sanctity of Marriage

By WATANABE Shoichi

Keeping a dog will suffice to learn that a male and a female tend to go together. As a child, I knew the behavioral pattern of a male dog through observation of one we kept in our house. Thus I came to understand naturally why adults regarded an "illicit union" with contempt, and realized the meaning of "marriage" to be clearly differentiated from it. In the teaching of the Catholic Church, marriage is highly prized as one of the sacraments. In Japan, ceremonial approval has been required in the presence of a go-between in order to show to the society that a union is not "illicit." Respect of marriage is directly coupled to respect of a family. And household and family are protected as a sacred thing by law.

From time to time, however, there occurs deviancy between a man and a woman. Intercourse between a married person with someone other than his/her spouse means adultery. It used to be subjected to criminal punishment but not anymore now. However, adultery sometimes begets a child. Offspring of parents who are not legally married to each other is called illegitimate, or sometimes a love child. If a father of such a child is considerate and with property, he would be able to distribute it properly lest there be any conflict after his death.

But, what if a man who committed infidelity is survived by his illegitimate child without any proper care about it? There might occur a struggle over his inheritance among the children left behind. In the past, law was supposed to protect marriage and accordingly household. Therefore, illegitimate children were denied any inheritance rights. However, in view of the fact that there actually exist such children and that it would be a pity if they denied any right to inheritance, law has been changed so that illegitimate children could be allowed half of what legitimate children receive. This is a solution by compromise, which has been generally praised as a sort of "judgment of Solomon" in that it pays due respect to the family system based on marriage and takes care of illegitimate children as well. However, the Supreme Court of Japan has recently ruled by a unanimous decision by more than ten judges that the right of illegitimate children to inheritance should not be distinguished from that of children born in lawful wedlock. This ruling completely ignores the significance of marriage and family system.

And it is truly a wonder that not a single judge raised an objection to it.

G.K. Chesterton points out that there are two types of democracy: one is "horizontal democracy," i.e. one intended only for those who are currently alive, and the other "vertical democracy", i.e. one intended to take into account the wills of the ancestors as well as the wishes of the descendants. He warns that "horizontal democracy" has an inherent danger of becoming despotism by those who are currently alive. There is an irresistible concern that the above-mentioned unanimous decision of the Supreme Court of Japan could be a form of despotism totally ignoring the wills of the Japanese ancestors as well as those of their descendants. It seems that the judges of the Supreme Court seem to have paid no attention to the fact that whereas the average percentage of the children born out of wedlock in other countries is around fifty, that in Japan is only two.

**(This is the English translation of an article written by WATANABE Shoichi, Professor Emeritus, Sophia University, which originally appeared on the e - Forum "Giron - Hyakushutsu" of GFJ on October 17, 2013.)**