

# 日本代位繼承制度之立法變遷及與我國法制之比較

## The Change of Legislation on "Succession Per Stirpes" in Japan and the Comparison with the Law in Taiwan

吳珮君 Pey-chun Wu

銘傳大學法律學系講師

Instructor

Department of Law, Ming Chuan University

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**摘要：**本文就日本現行民法中代位繼承觀念之發展，法制之變遷做一沿革上之分析檢討，其中昭和二十二年（一九四七年）之舊條文形式因與我法一一四〇條類似，故本文乃著重於二十二年至三十七年之修法經過，即其於適用上所面臨之法理爭議，法益考量，修正方案乃至於三十七年修法之結論等，均予以逐一闡明檢討。其次，再就日本現行規定中法理矛盾以及不合理之處予以檢討分析，以期辨明代位繼承之本質及內涵。最後，再就日本現行法與我國法制做一比較分析，並提出本文之結論。

**關鍵詞：**代位繼承，本位繼承，血親繼承主義，同時存在原則

**Abstract:** This article analyzes the legal system of the "Succession Per Stirpes" in the Japanese civil law. It focuses on the argument of law principle implementation, the amendment, the conclusion of the changes, and the contradiction of the law principle in Japan's current regulations. We also compare the current Japanese system with ours, and draw a conclusion.

**Key words:** succession per stirpes, standard succession, the principle of inheritance by blood, the principle of co-existence.