



The Ageing and Adult Support & Protection Legislative System: A Comparative Law Study

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Canberra on March 15, 2019

Abstract

- *The elderly with inadequate mental capacity* is increasing due to dementia, mental disease, higher brain dysfunction and so on.
- *Elder abuse / financial exploitation* are occurring in communities.
- We thus need various *public policy* measures so that citizens may make their own choices determining whatever is suitable and necessary to meet its *will* and *preferences*.
- Because *autonomy* and *the right to self-determination* are important universal values.
- An attempt to conceptualize *Adult Support & Protection* in a wider scope, which may be a useful concept from *human-rights* perspective.

Purpose of Research

This presentation focuses on the adult support and protection legislative system to make an attempt to give it a wider scope.

A wider scope would include an adult guardianship system, supported decision-making, and elder abuse safeguards to protect vulnerable adults at risk.

Adult support and protection legislative system includes;

1. adult guardianship system
2. supported decision-making
3. elder abuse safeguards

Research Question

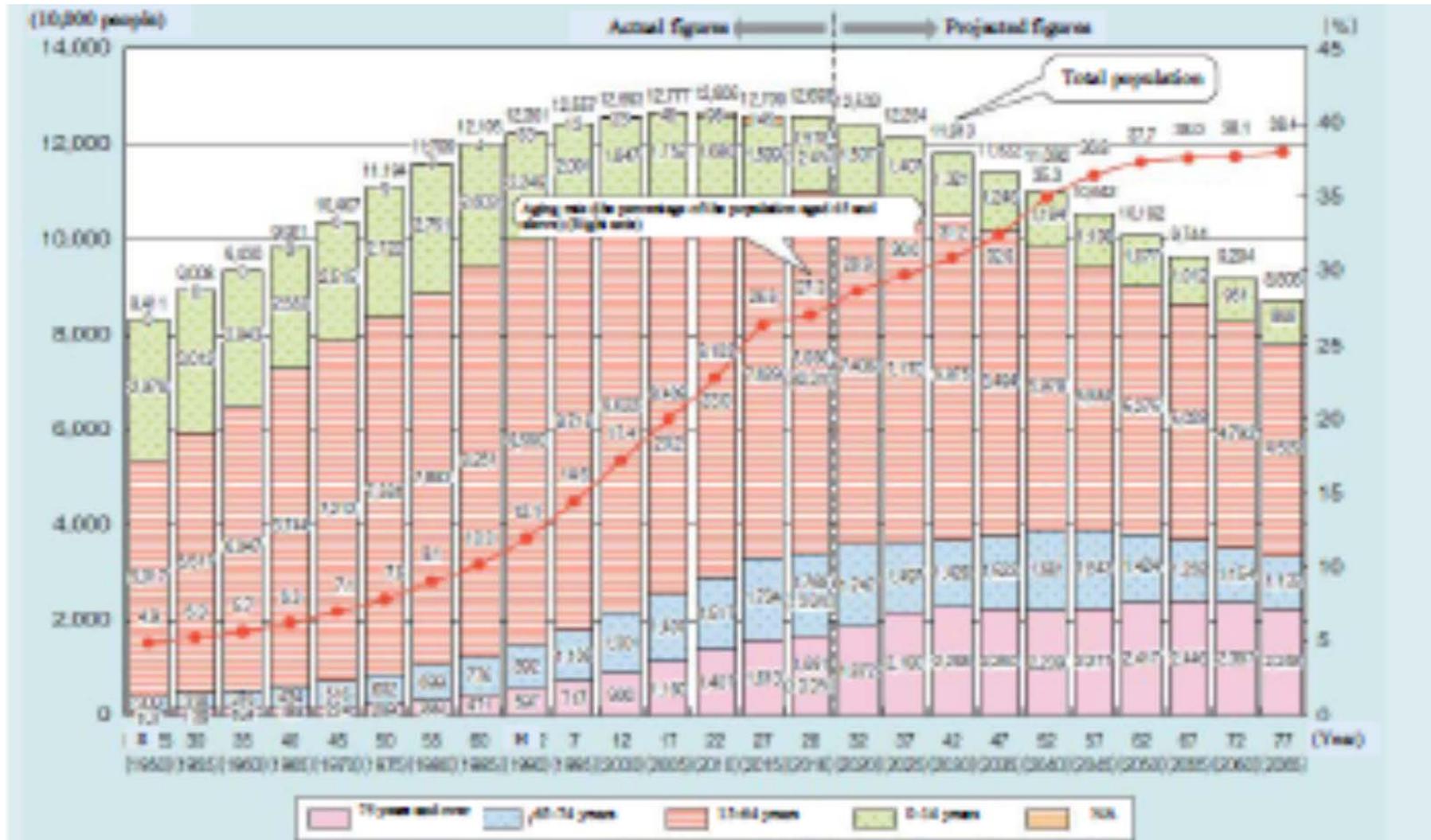
1. How are ageing issues being addressed, and how should adult support and protection legislative systems deal with ageing?
2. What does a comparative law study and analysis of adult support and protection legislations reveal?
3. How does a comparative law study affect possible adult support and protection legislation in Japan in the future?

An Ageing Society: key phrases

“Rapid ageing will occur in other parts of the world as well, so that by 2050 all regions of the world except Africa will have nearly a quarter or more of their populations at ages 60 and above.”

“In the coming decades many countries are likely to face fiscal and political pressures in relation to public systems of health care, pensions and social protections for a growing older population.” (U.N. Report *Global Issues - Ageing*)

“The rapid increase of the elderly with dementia” (Alzheimer’s Disease International 2015)



“Trends in Aging and Estimations for the future” in Japan Source: *Annual Report on the Aging Society: 2017(Summary)* p.3 by the Cabinet Office, Japan

Current situation in Japan

- Adults with inadequate mental capacity have basically four options:
 - ① the use of the adult guardianship system (in civil code);
 - ② the use of supported decision-making (by guideline);
 - ③ the use of both ① & ②;
 - ④ “de facto adult guardianship” by relatives/nursing home managers.
- The majority uses ④ without legal framework whilst legal protection for adults with disabilities in civil code is provided through ① only.
- PoA users are few whilst the government try to promote ① & ②.
- Multiple options should be presented for citizens to make their own choice.

Adult Support & Protection: concept

- A new legislative concept that includes protections for people with disabilities in civil-code is needed.
- In order to study such a possible legislative change, adult support & protection legislative system need to be analyzed.
- Currently, there is no clear legal definition of adult support & protection, but it is assumed that a certain commonality may be found in those being developed in Europe, Australia, and the US.

Comparative law study: analysis by country

- *The Hague Adult Protection Convention 2000*
- *Switzerland adult protection law 2013*
- *Austrian adult protection law 2017*
- *Scottish law reform project (under the process)*
- *Draft amendments to Victoria & NSW state laws in Australia (under the process)*
- *The US supported decision-making acts (states of Texas & Delaware) 2015/16 and under the process*

Comparative law study-NSW state case

- The “Guardianship Act 1987” is renamed to the “Assisted Decision-Making Act”
- To make “personal support agreement” for “assisted decision-making”
- To make “enduring representation agreement” or have “representative order” by tribunal for “substitute decision-making”
- To newly establish “office of public advocate”



Autonomy and rights to self-determination are to be highly respected

Comparative law study: definition

A comprehensive package of laws aiming to protect vulnerable adults through *the least restrictive necessary measures*, taking the *will and preferences* of the adults into consideration.

An offer of necessary support, according to individual characteristics, to minimize restriction of a principal's rights (*the principle of necessity*), and it is also considered to replace other less restrictive alternative measures available (*the principle of replenishment*).

Implications : principle

- It is important to offer *a comprehensive package of adult support & protection measures* so that citizens may make their own decisions whatever is suitable and necessary.
- Those legislations should aim at protecting vulnerable adults by including *the least restrictive necessary measures*, taking the *will and preferences* of adults into consideration.
- *The balance between state responsibility and citizen rights* is also important.

Implications to Japan: public policy

- *A community collaboration networking* will be inaugurated over Japan with the cooperation of local administration and judicial institution. Those networking would be a core institutional function to promote adult support & protection.
- Their core agencies would be authorized by either the family court or local administration to carry out some *public function* as is common with the adult protection associations in Austria.
- *Supported decision-making act* should be legislated.



VOLUME 9 ISSUE 1

The Journal of

Aging and Social Change

The Ageing and Adult Protection
Legislative System
A Comparative Law Study

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The Ageing and Adult Protection Legislative System: A Comparative Law Study.

The Journal of Aging and Social Change

9 (1): 53 – 69(2019).

doi:10.18848/2576-5310/CGP/v09i01/53-69

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