Inclusion of Local Residents by the Integrated Community Care System

Transition of the Social Welfare Systems in Japan

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I. INTRODUCTION

Japan's social welfare systems have been changing since the early 2000s and accelerating in recent years by promoting choice and the participation of individuals in response to the country's ageing population and increasing financial burden.

Presently much attention is being paid to the establishment of an 'integrated community care system' involving 1) securing housing for the elderly, 2) co-operated health and nursing care, 3) providing long-term care and livelihood support, 4) suitable public-private role sharing among government, private entities and local sectors, particularly focusing on mutual aid of local residents, 5) services for every-day living, and 6) regional characteristics, autonomy and independence[1].

This article will explore the issue of community care normatively by focusing on the inclusion of local residents. More specifically, this article will first review the history of the Japanese social welfare systems towards the integrated community care system, second, point out its affinity for the theories of the relationship between the state and civil society, and third, suggest avenues for reinforcement of the social-welfare systems as a public responsibility of support for social participation.

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1   *Chi'iki ni okeru iryō oyobi kaigo no sōgō-teki kakuho no sokushin ni kansuru hōritsu* [Act on Promotion of Ensuring Comprehensive Health and Social Care Services in the Community], Law No. 64/1989.

It should be noted that the term 'social welfare' is used here in the narrow sense to mean personal social services, which include aged and disabled care but exclude cash benefits.

II. JAPANESE HISTORY OF SOCIAL WELFARE SYSTEMS

Historically the Japanese social welfare systems have focused on the three types of services, including services by government, services used through contract and services by and in cooperation with local residents' participation, spread across four time periods.

Table 1: Japanese History of Social Welfare Systems

1st Period (pre-war–1950s)
· Public Assistance Act 1950, Child Welfare Act 1947, Act on Welfare of Physically Disabled Persons 1949, Social Welfare Provisions Act 1951
· Commissioned welfare volunteers, councils of social welfare, community chest committees

2nd Period (1960s–1970s)
· Act on the Welfare of Persons with Intellectual Disabilities 1960, Act on Social Welfare for the Elderly 1963, Mother and Child Welfare Act 1964
· Home-help, meals-on-wheels, short-stay, day-centre
· Community policy

3rd Period (1980s–1990s)
· Domiciliary care service, 'silver service', 'resident participating welfare service'
· Local welfare plans, decentralisation of power, cooperation among various bodies

4th Period (2000–)
· 'Fundamental and structural reform of social welfare'
· Long-term Care Insurance Act 1997, Services and Support for Persons with Disability Act 2005
· Information provision, contract regulation, evaluation of quality of care, rights advocacy
· Local area support to ensure the presence of systems that provide welfare services, local planning and human resources (Social Welfare Act 2000)
· 'Integrated community care system'

The period before the Second World War can be summarized as a period of underdeveloped formal welfare and local mutual aid. In the first period, immediately after the Second World War, the Public Assistance Act,[2] the Child Welfare Act,[3] the Act on Welfare of Physically Disabled Persons[4] and

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2   *Seikatsu hogo-hō,* Law No. 144/1950.
3   *Jidō fukushi-hō,* Law No. 164/1947.

the Social Welfare Provisions Act[5] were established as formal systems. All of these aimed at providing poverty relief, measures for placing poor people into welfare institutions and obtaining commissions from the local government to pay the institutions based on the principle of public-private separation found in Article 89 of the Constitution[6] as recommended by the occupation forces.[7] This mechanism remained in place until the 'fundamental structure reform of social welfare' was completed in 2000. Moreover, it should be noted that various community organisations were active in this era. They were founded for settlement activities in the pre-war age and influenced by US community organisations.[8] In particular, commissioned welfare volunteers[9], councils of social welfare[10] and community chest committees[11] were established based on the public-private separation principle.

Japan expanded welfare services between the 1960s and 1970s. Services responding to non-cash needs other than poverty relief were expanded to a variety of client groups but were still limited to low-income persons. New legislation, including the Act on the Welfare of Persons with Intellectual Disabilities,[12] the Act on Social Welfare for the Elderly[13] and the Mother and Child Welfare Act[14], were enacted though they were centred on placement measures for institutions and limited to low-income persons. Moreover, in the 1970s, local government started domiciliary services that began as locally funded projects outside of the formal system and were later funded by the national government. These free services still only targeted low-

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4   *Shintai shōgai-sha fukushi-hō,* Law No. 283/1949.

5   *Shakai fukushi jigyō-hō,* Law No. 45/1951.

6   *Nihon koku kenpō* [The Constitution of Japan], Constitution/1946. Article 89 reads: 'No public money or other property shall be expended or appropriated for the use, benefit or maintenance of any religious institution or association, or for any charitable, educational or benevolent enterprises not under the control of public authority.'

7   T. KITABA, *Sengo sochi seido no seiritsu to henyō* [Beginning and Transition of Placement System in the Post-war Age] (Kyōto 2005).

8   S. TAKEGAWA, *Chi'iki fukushi no shuryū-ka* [Mainstreaming of Community Care] (Kyōto 2006) 26.

9   Volunteers commissioned by the Minister, located in every local area in charge of consulting and support of local residents (*Minsei i'in-hō* [Commissioned Welfare Volunteers Act], Law No. 198/1948).

10   Non-profit organisation located in every municipality and in charge of promotion of welfare activities of residents (Article 109, *Shakai fukushi-hō* [Social Welfare Act], Law No. 45/1951).

11   Non-profit organisation located in every prefecture for fund-raising and distribution for welfare organisations (Article 113, Social Welfare Act).

12   *Seishin hakuyaku-sha fukushi-hō,* Law No. 37/1960.

13   *Rōjin fukushi-hō,* Law No. 133/1963.

14   *Boshi fukushi-hō,* Law No. 129/1964.

income individuals and included home help, meals on wheels, short stay and day centre facilities.

In addition, reflecting the collapse of traditional communities during the rapid economic growth in this era, community policy was aimed at regenerating the community, promoting community organisation and training volunteers.

Between the 1980s and 1990s personal social services became universal and available to those in need, regardless of income, with service use and local projects promoted alongside. The formal system did not change as placement measures for institutions and domiciliary care services were expanded to include all households (for a fee). Indeed, income restrictions for this service were abolished and it therefore became a universal and contractual service. The so-called 'Gold Plan' established by the government in 1989 intended to rapidly expand the three pillars of domiciliary care (home help, day centres and short stay). In addition, the so-called 'silver service' by for-profit corporations as well as 'resident participating welfare service' was promoted, and these helped people with specific needs to use the services regardless of income by way of contract or registered membership.

In this period, cooperation among local services was promoted, including local welfare plans, decentralisation of power, and activity networks among various bodies. The amendment of the eight welfare-related acts in 1990[15] was aimed at promoting both service use and localisation by legalising domiciliary care, local aged-care plans and the transfer of power of institutional placement to towns and villages.

In the fourth period, starting in the 2000s and continuing to the present, both service use by contract and localisation became more prevalent, with the earlier half of the period focusing on service-use by contract and the latter half focusing on localisation. The placement principle was abolished and changed to a service-use by contract principle wherein for-profit corporations could run domiciliary services. This 'fundamental and structural reform of social welfare' includes the principles of an equal relationship between service users and providers; comprehensive support in the community; entry of a variety of service provision bodies; professionalism, promotion of quality and effectiveness; transparency of management by releasing information; fair and just cost sharing, and the creation of an original welfare culture rooted in the community through residents' participation.[16] Based on these principles, the Long-term Care Insurance Act

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15   Law No. 58/1990.

16   CENTRAL SOCIAL WELFARE COUNCIL, *Shakai fukushi kisokō zō kaikaku ni tsuite* [Fundamental and Structural Reform of Social Welfare] (Tōkyō 1998).

1997[17] and the Services and Support for Persons with Disability Act 2005[18] introduced the user-contract system as well as a variety of support mechanisms for users' contracts such as information provision, contract regulation, evaluation of quality of care, rights advocacy and so on[19] through the Social Welfare Act 2000. At the same time, measures for ensuring the presence of systems that provide welfare services, local planning and human resources were introduced to provide local area support for securing resources and networks in the community,[20].

Since 2005, the amendment of systems has continued, focusing on local support in the community. Under the slogan 'establishing an integrated community care system', which aims for the comprehensive provision of housing, livelihood support, healthcare, long-term care and prevention, a variety of services has been promoted including community general support centres, community-based services, service-added homes for the elderly, collaboration between healthcare, long-term care, and so on.

III. THREE TYPES OF SOCIAL WELFARE SERVICES AND THE CIVIL SOCIETY

From the above overview of the development of the Japanese social welfare system, we can see that in each period there were three types of services corresponding to three principles of community care that have been combined, although at the same time, these conflicted with each other.

The first type of service is offered by the government and includes placement measures for institutions and direct provision of service and has a long history of use. The second service is a contractual service between private entities and users and has become central, particularly in the field of elderly care since 2000. The third is service by, and cooperation with, local residents. This includes the establishment of a local care plan and promotion of services by residents in an integrated community care system.

This is related to the theory of 'civil society', which divides society not into two sectors, public and private, but into three sectors instead, political, economic and (narrowly) civil. The last sector is referred to as the 'new civil society', which involves seeking mutual help among local residents within the community.[21]

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17   *Kaigo hoken-hō,* Law No. 123/1997.
18   *Shōgai-sha jiritsu shien-hō,* Law No. 123/2005.
19   Articles 75–87, Social Welfare Act.
20   Articles 89–108, Social Welfare Act.
21   Regarding the civil society theory, see Y. YAMAGUCHI, *Shimin shakai-ron* [Civil Society Theory] (Tōkyō 2004); S. HOSHINO, *Shimin shakai no keifu-gaku* [Geneal-

Traditional Western civil society theories presumed civil society as a community of liberal and equal citizens overcoming the feudal order. Civil society logically therefore preceded the state and the state was regarded as an organisation of civil society. This includes John Locke's and Jean-Jacques Rousseau's social contract theories, Adam Smith's commercial society theory and the Bourgeois society theories of Hegel and Marx.[22]

The idea of a new civil society was developed in the 1990s as a response to these theories. It can be said that civil society was re-evaluated globally after the 1990s with the Eastern European revolution, the anti-war and anti-globalisation movements and the activities of NGOs/NPOs in various areas. As an undercurrent there was, to a certain degree, a realisation of the limits to bureaucratic regulations and financial expansion of the welfare states. Jürgen Habermas discussed the revival of the concept of civil society and stressed its non-political and non-economic relations based on free will.[23] In the new civil society theory, association and network were thought to be distinguished from, but supplemented by politics and economy.[24]

Japan's civil society theories diverged from Western theories under the overwhelming influence of Marxism and 'Japan as a backward society theory'. In Japanese political thought after the war, thinkers such as Masao Maruyama and Hisao Otsuka, who were members of the 'civil society school', were very influential. While impeaching civil society as a bourgeois society, they advocated the antinomic attitude that Japan was a backward society with feudal residue and that a civil society that incorporated liberal citizens had not yet been established; thus, there was a need to strive for a civil society.[25] Then during the economic growth of the 1960s, advocates such as Keiichi Matsushita and Michitoshi Takabatake discussed civil society,[26] mostly in parallel to the practice of citizens' movements, such as

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ogy of Civil Society] (Kyōto 2009); M. YOSHIDA, *Shimin shakai-ron* [Civil Society Theory] (Tōkyō 2005); K. YAGI et al., *Fukken suru shimin shakai-ron* [Revival of Civil Society Theory] (Tōkyō 1998); K. UEMURA, *Shimin shakai to wa nanika* [What is Civil Society?] (Tōkyō 2010).

22 HOSHINO, *supra* note 21, 36-71; NAITO, *supra* note 21, 59-61; YOSHIDA, *supra* note 21, 131-228; UEMURA, *supra* note 21, 125‑160.

23 J. HABERMAS, Between Facts and Norms (Cambridge 1996).

24 HOSHINO, *supra* note 21, 72–88; YOSHIDA, *supra* note 21, 256–272; NAITO, *supra* note 21, 62-65.

25 M. MARUYAMA, *Gendai seiji no shisō to kōdō* [Thoughts and Actions of Modern Politics] (Tōkyō 1956): H. OTSUKA, *Kindai-ka no ningen-teki kiso* [Human Basis of Modernisation] (Tōkyō 1948).

26 K. MATSUSHITA, *Civil Minimum no shisō* [Theory of Civil Minimum] (Tōkyō 1971); M. TAKABATAKE, *Seikatsu-sha no seiji-gaku* [Political Theory of Living People] (Tōkyō 1993).

the anti-pollution, environmental protection, anti-nuclear, anti-war and feminist movements. A different discourse has been seen since the 1990s. Civil society in Japan was approached as 'new civil society' theory with Hajime Shinohara using 'discursive democracy' and Yoshikazu Sakamoto 'global civil society' as the major proponents.[27]

In the academic society of civil law after the War, Takeyoshi Kawashima pointed out that a gap existed between the modern law system and the people's consciousness of laws. He understood civil society as a capitalist economic society and asserted that the modern constitutional doctrine should be worked out through private law.[28] On the contrary, Eiichi Hoshino proposed a division between economic society (regulated by commercial law) and civil society (regulated by civil law)[29] and Katsumi Yoshida who divided society into three sectors, i.e. the market economy, the political community and the civil society which is connected by free will.[30]

IV. CITIZENS' PARTICIPATION AND PUBLIC SUPPORT IN SOCIAL WELFARE

The three main types of citizens' participation services differ on various points, including on the points of behavioural principles, involved actors, the forms of citizens' participation and support responding to the three sectors of society.[31]

The first service is the service provided by the government in response to political society. Its behavioural principle is the exercise of public power and redistribution based on democratic control, and its field is politics and administration. Its main actors are governments as a public sector. A form of citizens' participation includes participation in the decision-making process of welfare policy and the exercise of public power.

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27 H. SHINOHARA, *Shimin no seiji-gaku* [Politics of Citizens] (Tōkyō 2004); Y. SAKAMOTO, *Sōtai-ka no jidai* [Age of Relativity] (Tōkyō 1997).

28 T. KAWASHIMA, *Nihon-jin no hō-ishiki* [Japanese Sense of Law] (1967 Tōkyō).

29 E. HOSHINO, *Minpō no susume* [Introduction to Civil Law] (Tōkyō 1998).

30 K. YOSHIDA, *Gendai shimin shakai to minpō-gaku* [Modern Civil Society and Civil Law] (Tōkyō 1999).

31 Regarding citizens' participation in social welfare, see SOCIAL SECURITY INSTITUTE, *Shakai fukushi ni okeru shakai sanka* [Citizens' Participation in Social Welfare] (Tōkyō 1996).

Table 2: Three types of citizens' participation in social welfare

Service	Service by government	Service used through contract	Service by and in cooperation with local residents
Society	Political society	Economic society	New civil society
Principle	Power	Contract	Reciprocity
Field	Politics, Administration	Market	Local community
Sector	Public sector	Private sector	Local sector
Actor	Government	Service providing bodies	Local resident groups, NGO/NPOs, voluntary groups
Form of participation	Decision-making process	Use of service	Cooperation, volunteer, NPO activities
Form of support	Council, rally, public comment, petition of objection	Social work, information, right advocacy, regulation of contract, evaluation of quality	Community organisation, resource development, network

In social welfare, support for political participation is expressed through involvement in the decision-making process through councils, residents' rallies, public comments, and petitions in case of objections to litigation and tribunals' decisions. This occurs where there is direct provision of service and benefit, regulation of the service provider, levying contribution and cost, administrative measures such as placement into welfare institutions and care needs certification and finally, decisions related to administrative planning like local care plans.[32]

The second service is used through contract responding to the economic society, under the principles of contract, and operating in the market field. The main actors are organisations in the private sector including social

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32 Regarding legal discussions on this type of participation, see N. KADOMATSU, *Tetsuzuki katei no kōkai to sanka* [Public disclosure and Participation of Administrative Process], in: T. Isobe (ed.) *Gyōsei-hō no shin-kōsō II* [New Ideas of Administrative Law] (Tōkyō 2008); A. TOYOSHIMA, *Jūmin sanka seido no tenkai to hōteki kadai* [Legal Topics of Residents' Participation], Nanzan Hōgaku 32 (3/4) (2009); K. TAKADA, *Shakai hoshō rippō ni okeru jūmin sanka seido no genjō to mondaiten* [Situation and Topics of Residents' Participation Systems in Social Security Laws], Ryūkyū Hōgaku 62 (1999).

welfare corporations, medical corporations and for-profit organisations. Here, citizens' participation is most seen in the making use of services provided by such organisations. As mentioned above, regarding the Japanese social welfare systems in the past, a form of administrative measure (placement) was central to service provision, but after the 'fundamental and structural reform of social welfare' in 2000, service use by contract became the norm, especially in the field of aged-care.

Under these situations, it is now necessary to establish a system of individual support for service users because many users of welfare services lack the essential information or skills for decision-making. Individual support for service users includes social work, provision of information, rights advocacy such as abuse prevention and adult guardianship, complaint resolution process, regulation of contract and evaluation and regulation of the quality of care.

The third service is provided by and in cooperation with local residents responding to the new civil society. Its behavioural principle is reciprocity, and its field is the local community. The main actors in this type of service are local sectors including local resident groups such as neighbourhood associations, NGOs/NPOs, voluntary groups etc. A form of citizens' participation includes cooperation with governments, volunteer activities and NPO activities, with a variety of local support measures provided to encourage residents' participation, such as community organisation, resource development, enhancing human resources, and network building. In order to promote local support, as planned, local governments must establish welfare plans.

V. Conclusion

Approaching social welfare services as social participation, we can find three types of participation and public support as a dynamic of interaction between politics, individual users and local community. Current community care in Japan should be understood as a combination of the three above-mentioned stakeholders.

Legal studies of Japan's history of social welfare systems has so far only focused on a change from 'measures of placement' to the 'use through contract'.[33] We argue that this is too restricted a view. In each period we have identified three types of services including service provision by the government, service use by contract and local services and cooperation involv-

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33   M. Kawano, *Shakai fukushi-hō no shin tenkai* [New Departure of Social Welfare law] (Tōkyō 2006), Y. Kikuchi, *Shakai hoshō-hō* [Social Security Law] (Tōkyō 2014).

ing residents. All of these have been entwined, with the latter two being neglected in the official history of social welfare systems in Japan.

Particularly in recent years, the dynamics between the three services are providing the basis of constructing community care systems in a comprehensive way. These services do more than simple role sharing. Regarding the actors, i.e. the government, private providers and community residents, they are requested to provide services cooperatively under government coordination rather than playing each part separately. The goal is to achieve an 'integrated community care system'. More specifically, the Long-term Care Insurance System established in 1997 embodied almost all targets set by the government. It has to be said, however, that the reform has not made enough progress in the field of welfare for children and the disabled.

This flow of service provision demonstrates that service use is changing from a vertical relationship of administrative measures imposed by the government (placing the needy into an institution using their authority), to a horizontal relationship of contract and mutual-aid among service-users, providers and residents in the community. As a variety of producers provide services in addition to the government, public responsibility has shifted from direct provision of services to enabling the use of various tools including regulation and planning.

Table 3: From placement to contract
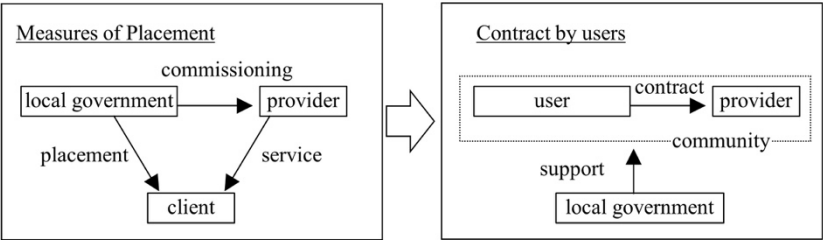
The field of political science has considered public policy in terms of 'from management to governance', but legal studies have not yet sufficiently considered these policies and their effect on the actual dynamics of social welfare. It is therefore necessary to conduct research on 'support law' in addition to traditional 'regulation law' and 'benefit law'. Support law includes political participation support, individual user support and local community support. The latter two are currently particularly important and are expected to integrate all local residents in the community by establishing an integrated community-care system with residents supporting services, residents using services and residents providing services in the community.

SUMMARY

Japan's social welfare systems have been changing since the early 2000s and accelerating in recent years by promoting choice and the participation of individuals in response to the country's ageing population and increasing financial burden. Presently much attention is being paid to the establishment of an 'integrated community care system'. The article explores the issue of community care normatively by focusing on the inclusion of local residents. It first reviews the history of the Japanese social welfare systems towards the integrated community care system, second, points out its affinity for the theories of the relationship between the state and civil society, and third, suggest avenues for reinforcement of the social welfare systems as a public responsibility of support for social participation. The changing role of law with regard to social welfare in Japan today reflects a shift from regulation to support. Law should indeed support the dynamics of and interaction between the main stakeholders of the communities. The transition is therefore not necessary from government to contract to the individuals, but at all times a pallet of these three elements can be found in the social welfare system.

(The Editors)

ZUSAMMENFASSUNG

Die sozialen Sicherungssysteme in Japan haben sich seit der Jahrtausendwende mit zunehmender Geschwindigkeit verändert. Kennzeichnend dafür ist die Förderung von Wahlmöglichkeiten und der Einbeziehung der Bürger als Reaktion auf die rasche Alterung der japanischen Bevölkerung und die damit verbundenen finanziellen Belastungen des Staates. Aktuell findet die Schaffung eines „integrierten gemeinschaftsbasierten Fürsorgesystems" besondere Aufmerksamkeit in Japan. Der Beitrag beleuchtet diese Entwicklung aus rechtlicher Perspektive, wobei das Augenmerk auf der Einbindung lokaler Gemeinschaften liegt. Der Autor gibt zunächst einen Überblick über die historische Entwicklung des japanischen Wohlfahrtsregimes in Richtung des genannten integrierten Fürsorgesystems und setzt sich sodann mit der Beziehung zwischen dieser Entwicklung und den Theorien über das Verhältnis von Staat und Zivilgesellschaft auseinander. Anschließend zeigt er Möglichkeiten auf, wie sich das System der sozialen Wohlfahrt als öffentliche Verpflichtung auf eine soziale Teilhabe stärken lässt. Das Recht sollte dabei die Interaktion zwischen den wesentlichen Beteiligten an der sozialen Gemeinschaft fördern. Dabei geht es nicht notwendig um einen substitutiven Wechsel von hoheitlichem über vertragsbasiertes hin zu individuellem Handeln, sondern vielmehr darum, dass alle drei Elemente gleichermaßen im Rahmen der sozialen Wohlfahrt eine Rolle spielen.

(Die Redaktion)