CHAPTER SIX

FUSAKO SEKI


A Comparison of the United States and Japan

SCOPE

Topics under Discussion

Who should pay for the cost of elder care, when the elderly themselves cannot? Should government, meaning society as a whole, support the expense of elder care? Should children, who have financial ability, be legally responsible for paying the costs of their parents' care? Most people agree that spouses should take care of each other. However, the responsibility of other family members, especially adult children, is not at all clear.

In Japan, general support duties of the family are stated in the Civil Code, and some social welfare laws also set forth the children's filial responsibility. Children, for example, can be asked to reimburse the cost of public assistance paid to their parents. In the United States, Family Responsibility Laws (FRLs), in many states, stipulate the support duties of children. Such states, for example, could use these laws to require children to reimburse the cost of benefits given to the elderly by the government.

The rationale behind imposing filial responsibility on children is questioned in many countries around the world. Japan is also struggling with this issue, facing the increase in expenditure caused by an "Aging Society" (Korei Shakai). Japan must re-examine the role of children, especially with regard to the cost of elder care. This chapter tries to clarify the legal role of children in relation to the role of government by re-examining these support laws.

The Particularity of the United States

Many countries have asked, answered, or are still considering the similar question about the role of government and children. Here, I examine the United States for a comparison with Japan, since the United States is a particular country where the legal role of the family has been questioned in relation to social welfare programs throughout its history. In Japan, Germany, and some other civil law countries, children’s filial responsibility is stated in codified laws. The English and American story is different: the background common law only obligated parents to maintain their children and spouses to take care of each other. But the English Poor Law of 1601, copied in some of the American colonies, included a Family Responsibility Law imposing upon children the responsibility for maintaining their parents. The purpose of imposing filial responsibility was to reduce public expenditure under the Poor Laws. Thus the fairness of imposing support duties upon children in relation to the role of government has been a topic of debate in the United States since colonial times, compared with civil law countries where children's filial responsibility was an obvious duty or with countries, such as Britain and Sweden, where it was decided in the course of history that children had no economic responsibility for their parents.

The FRLs in the United States are not frequently applied these days, and those who see the disadvantages of obligating children to support their parents have questioned whether these laws should exist. FRLs have sparked thought-provoking debates. Yet FRLs are still in place in 29 states. Nevertheless, a country such as Britain, where the roots of American support laws originated, abandoned similar laws in 1948. The laws allowing nursing homes to ask children to reimburse the cost of care afforded to their elderly parents are still on the books. However, there is a possibility of increase in use of such laws, with ever growing pressure of shifting the costs of long-term care.

Accordingly, these longstanding debates in the United States over whether it is reasonable to require children to support their parents to reduce the public expenditure on elder care are interesting and remarkable. This chapter examines these debates in the United States from a comparative viewpoint. I hope that this comparison with Japan will provide some general theory that will be of some guidance to other countries in considering the role of governmental and familial responsibilities in taking care of the frail elderly.

SUPPORT DUTIES IN JAPAN

Public and Private Support in Taking Care of the Elderly

For the basis of this discussion, the systems and the situations of elder care in Japan and the United States are briefly explained in each section. A somewhat more detailed explanation of the Japanese system is provided to make up for the lack of articles written in English regarding Japanese elder care.