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Journal of Politics and Development

ISSN 2632-4911

Volume 13 ■ Number 2 ■ Summer 2023



# the rest: journal of politics and development

*Previously published as Journal of Global Analysis (JGA)*

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# Adaptation of Law and Policy in an Aged Society: Guardianship Law and People's Behavioural Pattern

the rest:  
journal of politics and development  
2023 | vol 13(2) | 144-154  
[www.therestjournal.com](http://www.therestjournal.com)

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KEYWORDS	ABSTRACT
<p>Ageing, Guardianship, People's behavioural patterns, Family reliance, Individual autonomy</p> <p>Received April 6, 2023 Revised May 18, 2023 Accepted May 29, 2023</p>	<p>This essay reviews some typologies of people's behavioural patterns and examines relationships between guardianship laws and policies and people's behavioural patterns in Japan and the State of Victoria. Through such analysis, a consideration regarding the adaptation of law and policy in an aged society is addressed. By reviewing people's behavioural patterns in these two states, two keywords appear essential in practice under the guardianship law and policy: one is "family reliance"; the other is "value of individual autonomy." Most Japanese do not rely on legal measures, including adult guardianship when it concerns private autonomy for property management and personal affairs, but they can use legal measures even staying with family reliance. The guardianship law in Japan must be reformed to create a limited guardianship type with less than one year for self-revocation. With the value of individual autonomy, people can decide by themselves what to do for the future. This issue is difficult to tackle because of the legal consciousness of older Japanese adults and the nuanced relationships between relatives. It is recommended that Japanese people should debate value issues in public for a better society and to ensure the people's participation in social affairs through their own initiatives for establishing the value of individual autonomy. The baby boom generation, who are educated at schools in democracy postwar, may change the behavioural pattern of older adults in the future. The research method is an interdisciplinary literature survey and interviews with experts, with a particular focus on comparative guardianship law and policy studies in Japan and the State of Victoria.</p>

## Introduction

The long-term future is certainly ambiguous, but long-term projections of demography are an exception that is most likely to materialize as expected. Therefore, the future must be planned based on such long-term demographic projections, which have been clarified globally for the years until 2100 (UN, 2022). Among countries, Japan boasts the world's most advanced aged society. In Japan, 29.1% of the national population was aged 65 and over in September 2022. The percentage of older adults aged 65 and over is projected to rise 38.4% in 2065 (Cabinet Office of Japan, 2021: 3). The national population is approximately 125 million and slightly decreasing year by year. Currently, the number of older adults with dementia is estimated at 6.0 million, which is projected

to increase to 7.3 million by 2025, when one in five older adults aged 65 and over will suffer from dementia.

In Australia, the percentage of the population aged 65 and over was 16.2% (2021) and is expected to rise between 21% and 23% by 2066 (AIHW, 2021). 30% of older adults aged 85 and over suffer from dementia. The population of Australia is approximately 25 million and is slightly increasing year by year. First-generation immigrants with diverse cultural backgrounds, such as from the Mediterranean, the Balkans, the Middle East, and Asia, are ageing, and the state and special territory governments are being forced to deal with their treatment. Therefore, the uniqueness of Australia lies in its ageing population with cultural diversity.

Adults with cognitive impairment cannot protect their interests in daily life and face the risk of harm. Therefore, measures are needed to support and protect older adults from harm. In countries that share a similar law system, the responses to law and policy measures by people differ. It is necessary to introduce law and policy measures as well as devise modes of operation that matches people's behavioural pattern in the country. Therefore, in addition to a design of law and policy in theory, people's behavioural patterns in practice must be considered. This is because a law- and policy-based system is workable through mutual transactions between law and policy, which provide the social norms and guidance on the one hand, and people who may observe the law and policy on the other hand.

Comparative law is a discipline of law that analyses differences and similarities between the laws of countries. It is useful not only to understand the law system but also to develop the laws in question. Comparative law studies can offer suggestions from other countries with the same challenge to the country. Building relationships with researchers and practitioners is important for researchers to understand not only the legal theory but also the practice of the law. Comparative law studies must be based on a multi-dimensional dialogue between researchers and practitioners at both ends.

In a law related to the motives of human beings, such as guardianship law, it is essential to clarify the state of practices and discuss people's behavioural patterns. Such a theme is difficult to generalize and is not discussed in the articles or at conferences. This essay attempts to answer the research questions: "What people's behavioural patterns may influence guardianship law and policy practice in Japan and the State of Victoria, and how should the legislatures and policymakers in these two states consider people's behavioural patterns when legislating or reforming the guardianship law and policy?"

The State of Victoria is regarded as a leading state for Australian guardianship laws and policies because it has created modern guardianship legislation since the 1980s, known as the "Victorian model" (Carney and Tait, 1997: 19). Japan and the State of Victoria, having different population sizes of 125 million and 6.5 million, share similarities in a democratic society, advanced economic standards, and lifestyle, but people's behavioural pattern differs. This essay provides implications of adapting law and policy in an aged society, focusing on guardianship law and people's behavioural patterns in Japan and the State of Victoria.

## **Methodology**

The research methods are an interdisciplinary literature survey and interviews with experts based on comparative guardianship law and policy in Japan and the State of Victoria. The scope of laws and policies is limited to those related to statutory guardianship, enduring power of attorney, and supported decision-making. The literature research covers academic books, articles, and websites within the scope of law and policy as described above in Japanese and English, which were



available between October 2018 and March 2023. These sources are reviewed through research in the discipline of civil law. The previous studies on the Victorian guardianship system and supported decision-making refers to local literature surveys because those in Japan are limited to several ones.

The author conducted interviews with experts in Melbourne on March 1–3, 2017, March 4–12, 2019, and February 22–27, 2023. The subjects of the interview were experts in universities, research institutes, not-for-profit organizations, and public agencies, including the Office of the Public Advocate, Civil and Administrative Tribunal, State Trustees, and the Department of Health. Questionnaires were sent to experts by email in advance, and interviews were conducted in their offices in Melbourne by the author. Interviews were recorded as minutes. Email correspondence of experts by the author followed when it was necessary. The author adheres to the ethical standards imposed on academic research and has no conflict of interest with any of the interviewees.

The primary limitation of this study is that the essay is a literature analysis and does not include quantitative data related to relationships between the guardianship law and policy and the people's behavioural patterns in question. In this sense, people's behavioural pattern illustrates the main factors that may give influence people consciously or unconsciously. Therefore, people's behavioural pattern is conceptually described as a general tendency that people may understand. However, this limitation does not negate the importance of academic analysis of the research question.

In the sections below, the essay first reviews the guardianship law and policy instruments that support and protect older adults with cognitive impairment in Japan and the State of Victoria. Second, the essay reviews some typologies of people's behavioural patterns based on literature surveys in these two states. Third, the essay examines relationships between the guardianship laws and policies and the people's behavioural patterns in the two states based on the keywords "family reliance" and "value of individual autonomy." Lastly, the essay is concluded.

## **Guardianship Law and Policy**

Every country has its own adult guardianship system for statutory guardianship system, enduring power of attorney, and supported decision-making, but law and policy design and practices of these legal measures differ. Law and policy design and practices in Japan and the State of Victoria are briefly summarized below.

### **Japan**

Japan is one of the civil law countries, and the adult guardianship system is regulated in the Civil Code and relevant laws. The adult guardianship system is composed of two legal measures: (a) statutory guardianship stipulated in the Civil Code; and (b) voluntary guardianship by a specific law. Statutory guardianship comprises three types according to the principal's relevant capacity: "guardianship," "curatorship," and "assistance". The principal refers to the represented person or the person who is supported by others. Guardianship is applied to all legal acts regarding property management and contracts of the principal, while curatorship and assistance are applied to specific legal acts specified by the family court through a hearing. Adult guardians are supervised by family courts through regular reports to the courts.

The number of statutory guardianship users in December 2022 was 242,348, and approximately 74% of them are guardianship type (Courts of Japan, 2023). In response to the ageing of the population and increasing troubles resulting from older adults with dementia, the Act on Promotion of the Adult Guardianship System was enacted in March 2016. The Government of



Japan has implemented advocacy assistance initiatives so that older adults may access easier to the adult guardianship system.

The voluntary guardianship system is similar to a system to use an enduring power of attorney, but the proxy contract creating the voluntary guardianship must be notarized by a notary public. After the mental capacity of the principal declines, the voluntary guardian lodges a petition to the family court and conducts legal acts for the principal in line with the contract. The voluntary guardian is under the supervision of a voluntary guardian supervisor appointed by the family court. The voluntary guardianship contract can provide unique support according to their own intentions.

The number of voluntary guardianship cases in December 2022 was 2,739 (i.e., 1.1 per cent of all guardianship cases; Courts of Japan, 2023), although more than 250,000 contractors have concluded the proxy contracts (i.e., May 2021 survey report of the Ministry of Justice of Japan). Most proxy contracts do not develop voluntary guardianship with the supervisor. One of the reasons it happens is because the proxy contract remains valid and voluntary guardians continue receiving fees even after the mental capacity of the principal declines (Article 111, Civil Code of Japan). This is a difference of law and its interpretation between the civil code and common law.

Once the petition procedure is completed, statutory guardianship authority and voluntary guardianship contracts will be registered with the Legal Affairs Bureau. The registry can be disclosed registered information by issuing a document certifying the registered particulars (Ministry of Justice of Japan, n/a). Safe transactions to deal with estates or assets in the market can be secured through such disclosure to third parties.

The Government of Japan provides supported decision-making guidelines for nursing home managers and adult guardians, which encourage them to go through the process of supported decision-making (MHLW, 2020). The training programs of supported decision-making on the basic practice have been implemented for the staff of public agencies and relevant practitioners since December 2020, and several pilot projects, including Toyota City, to excise supported decision-making in the community have just started.

### ***The State of Victoria***

The State of Victoria inherited the common law of England, which it continues to use today. The guardianship system is defined by three Acts: Guardianship and Administration Act, Powers of Attorney Act, and Civil and Administrative Tribunal Act. These Acts regulate three public agencies: the Office of the Public Advocate, Civil and Administrative Tribunal, and Public Trustees. The uniqueness of their guardianship system lies in separate functions for the guardian (personal affairs) and the administrator (financial management). Five principles are summarized: the presumption of capacity; the least restrictive option taken by the decision-maker; respect for autonomy; inclusion as a valued member of the community; and the adult's welfare and interests (Willmott et al., 2017).

The Victorian Civil and Administrative Tribunal appoints relatives or close friends of the principal as guardians with self-revokable terms and does not appoint legal/welfare practitioners as guardians. This is to avoid conflicts of interest resulting from remuneration. The duration of guardianship is usually limited to dealing with legal issues according to the principle of necessity. The deliberations on guardianship constitute a legal examination, and a decision is made after hearing the circumstances of the parties. Observing a hearing gave the impression of people involved in a casual interview at a city hall when the author attended a hearing as an observer on March 12, 2019.

Enduring powers of attorney are frequently concluded, but there is no obligation to register with authorities, and thus the state government has no idea as to how many enduring powers of attorney have been concluded. In the event of fraudulent activity in an enduring power of attorney, the victim or its stakeholders can lodge a petition with the tribunal and have an expeditious hearing. The number of such hearings is limited, but it takes a lot of time to sort out the facts related to fraudulent activity in an enduring power of attorney (i.e., from an interview of a member of the tribunal with the author on March 12, 2019).

In the State of Victoria, two tracks of supported decision-making have been in operation since March 2020. Namely, one is contract-based supported decision-making, and the other is supported decision-making with the supporters appointed by the tribunal by law.

The number of tribunal orders in the State of Victoria 2020/21 was 3,373 (1,336 guardians, 2,036 administrators; AGAC, 2022). The number of newly appointed guardianship orders in 2021 was 39,800 in Japan (Courts of Japan, 2022). The statutory guardianship system is used relatively more in the State of Victoria than in Japan on the same population scale, but Victorian tribunal orders include the number of renewal and emergency orders and some overlapping of guardian/administrator orders that the Japanese guardianship orders do not include.

## People's Behavioural Patterns

### Japan

Japan remains a hierarchically organized social system, which was called a “vertical society” (Nakane, 1970). When an individual goes against an authoritative person, such an individual could be excommunicated from the community or group. As such, even in unpleasant situations, the much a dissenting individual can do is to remain silent. There is the wisdom of the commoners who unconditionally accept the unwritten rules of the institutions, follow the majority views, and spend their lives without any turbulence.

During the COVID-19 pandemic, a storm of self-restraint raged over Japan, and those who opposed it were seen to be socially defeated. It was found that Japanese people oppress each other not only vertically but also horizontally. This was called “peer pressure”. Various factors are assumed to constitute a phenomenon of peer pressure, such as historical reasons (e.g., effects of Buddhism, the mentality of agricultural society), primary educational effects (e.g., collective moral education), and a local practice not to make things transparent (e.g., part of traditional Japanese philosophy), and none of them is more overwhelming than the others (Kokami and Sato, 2020).

If any social problem arises, the government agency responsible for overseeing the case will be blamed by the mass media or consumers. This may be a factor that impedes the behaviour of those who are willing to take risks and try new things. The formal opinion (*tatema* in Japanese) is prioritized, and little custom of discussion in public is available based on what those willing to take risks really think (*honne* in Japanese; Nakata, 2014).

In Asia, including Japan, the family is a social unit, and even if the law system was not well in place, it is customary for people to help each other based on their shared kinship. This applies to other regions, such as the Middle East and the Mediterranean region. This behavioural pattern is related to life culture in the region, and a tendency that shows how much people rely on the law and policy or their family or relatives differs by region.

The system of patriarchy and succession to the head of the family established in the former Civil Code of Japan in 1898 set the family as the basic unit of Japanese society, and as a general rule, the

eldest son inherited the property of the family as the next head of the household. No public authority entered the family, and the patriarch was supposed to settle domestic affairs within the family. This system was abolished in 1947 as a democratic program. The Imperial Family is the one to maintain this traditional system under the Constitution of Japan.

A view appears that even today, the consciousness of patriarchy continues to live in society and influences Japanese people's activities in business (Emanuel Todd, 2022). Older Japanese aged over 85 were born in prewar and wartime and educated at schools in the old regime. Younger generations are influenced by those people from generation to generation, and it might be inevitable for Japanese people to follow patriarchy to some extent. If so, it makes sense that most Japanese people support the Imperial Family system.

### ***The State of Victoria***

The State of Victoria constitutes a multicultural society, and today many ethnicities interact frequently. One-fourth of Australians are first-generation immigrants born outside Australia, of which 60% were born in non-English speaking countries (Australian Bureau of Statistics, 2017). Since Australia is located in the Southern Hemisphere and surrounded by the sea on all sides, it is characterized by its geographical isolation. However, Australia has been actively accepting refugees and migrants from conflict areas. This national policy has led to the formation of a multicultural society.

There is respect for the human rights of the indigenous peoples, and the government's policy of maintaining cultural diversity is clearly set out (Department of Home Affairs, n/a). The State of Victoria enacted the Victorian Charter of Human Rights and Responsibilities Act 2016, considering that the Constitution in Australia does not state a bill of rights. The State of Victoria is a contract-based society and is concerned with individual autonomy and self-determination.

Australians, including Victorians, think highly of relationships with others, known as "mateship." Rather than rely on lawyers to protect their interests, it is said that they help each other in the community or within the same group of relatives and cultural backgrounds and utilize public institutions when necessary. They generally respect public institutions. An officer of the Victorian Ministry of Health has disclosed that they will explain their state law and policy to the fourteen ethnic group leaders in Melbourne to activate communication with non-English speaking citizens (i.e., from the interview of the Ministry of Health by the author on February 27, 2023).

### **Discussion on Guardianship Law and People's Behavioural Pattern**

By reviewing the people's behavioural patterns in Japan and the State of Victoria, two keywords appear essential in practice under the guardianship law and policy. One is "family reliance"; the other is "value of individual autonomy." Below, the discussion will be explored based on these two keywords.

#### ***Family Reliance***

It is apparent most older adults in Japan who do not use the adult guardianship system rely on informal arrangements to manage their personal affairs and property. In fact, the number of adult guardianship users is estimated to be equivalent to 2% to 3% of potential users with cognitive impairment (Regional Guardianship Promotion Project, 2022). The remaining 97% to 98% are estimated to be supported in informal arrangements. In such cases, they have potential risk of abuse, particularly financial exploitation. Elder abuse is regulated by the elder abuse prevention

law, but the annual statistics show how many elder abuses happen, although it does not capture the whole picture as only a few cases of elder abuse are reported (MHLW, 2021).

The family courts appoint law/welfare practitioners as adult guardians at 85%, with fees paid by the principal. This is one of the reasons people do not lodge a petition for guardianship because it is costly, and people do not want to have the situation controlled by a stranger even if he/she is a professional guardian. In Japan, other than family or relatives, people tend not to be interested in guardianship or welfare activities unless they are paid, although some exceptions are seen as that welfare practitioners or volunteers work for principles without fees. The economic reason is important.

In the State of Victoria, the Victorian Law Reform Commission (VLRC) report, Guardianship Final Report 24, was published in 2012. This is a Victorian guardianship law reform report. Paragraph 8.89 of the report states that “supporter arrangements are designed for close, personal relationships, which cannot be replaced by professional appointments” (VLRC, 2012: 139). The Victorian guardianship laws 1986 and 2019 adopted the policy that the tribunal should prioritize relative or close friend appointments as guardians or supporters without remuneration. In this respect, Victorian guardianship largely relies on relatives or close friends of the principal.

Informal arrangements and family agreements are common in the State of Victoria. Family agreements between a principal and their relatives are that the relatives take care of the principals in exchange for the principals' property transfer. Such agreements are not typically put in writing and are fragile, and the principals' interests are not guaranteed by law.

Victorian people use enduring powers of attorney or adult guardianship as far as it is necessary. Even family members use the adult guardianship system for a short period for crucial decision-making on behalf of the principal (i.e., email correspondence of a member of the tribunal with the author on September 2, 2021). Elder abuse is one of the social issues, and the move to legislate the elder abuse prevention act in the State of Victoria is underway.

In contrast, most Japanese people rely on family members or relatives but do not rely on the adult guardianship system. They can use the law system, even staying with family reliance as Victorians do. To materialize this combination of family reliance with guardianship, the guardianship law in Japan must be reformed to create a limited guardianship type with less than a year of self-revocation. People can then use limited guardianship as long as it is necessary, even staying with family reliance.

### ***Value of Individual Autonomy***

In the State of Victoria, the Terms and Reference of the VLRC Report 24 (2012) addresses “the principle of respect for the inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons” (VLRC, 2012: xi). This term demonstrates that the purpose of the Victorian guardianship law reform is maximizing individual autonomy and independence. The policy of the Victorian Government stays with the value of individual autonomy.

A research program by Monash University, known as the Protecting Elders' Assets Study (PEAS), examines rural and multicultural responses to intra-familial and inter-generational asset management (King C et al., 2011). This research implies gaps in behaviour in asset management among older Victorians according to their cultural backgrounds. It establishes the fact that Victorians with roots in non-English speaking countries, such as Vietnamese Victorians, do not use enduring powers of attorney as much as Victorians with English-speaking ancestry do. It can be said that, generally, people with Asian origins do not use EPAs.

In Asia, enduring powers of attorney have become relatively common only in Singapore, and a total of 3.5% of the national population (i.e., Singapore nationalities and permanent residents with foreign passports; approximately 4 million) have concluded lasting powers of attorney, mostly with relatives (96%) as counter contracting parties (Office of the Public Guardian of Singapore, 2023). This is due to the initiatives conducted by the Government of Singapore, including the digitalization of lasting powers of attorney procedures.

In Japan, considering that voluntary guardianship is exceedingly underutilized, one researcher has wondered whether a legal culture of self-determining matters of a principal, such as contracting them with a voluntary guardian, will ever take root in Japan (Fukada, 2018). According to some Japanese lawyers, parties who are reluctant to consider voluntary guardianship or estate planning have two things in common. They have an ardent desire not to entrust their property management to anyone, including relatives, while they are healthy. If they entrust someone in their family with their property management, they do not want to be intervened by other relatives as to why they chose to entrust it to that person (i.e., an online symposium sponsored by Elder Law Society Japan on March 26, 2022). This issue is difficult to tackle because of the legal consciousness of older adults and the nuanced relationships between relatives.

The legal system, like the governance system and business, has become Westernized in Japan, but the people's traditional mindset persists, and Western-style legal thinking is yet to hold sway over the people. Article 244 of the Penal Code of Japan regulates exemption from criminal acts by relatives. This provision is meant to address the idea that "law does not enter into home" (Sukimoto, 2009). This rule, however, does not work in the case that the relative is an adult guardian. [The Supreme Court of Japan ruling on a defendant's case of business embezzlement, Supreme Court of Japan, Penal Code Vol. 66, No. 10, page 981 on October 9, 2012]. Relative guardians who violate the law are revoked by the family courts. These may hint that many relatives use their parent's money for their own interests.

Considering primary education at schools and following the life environment of older adults aged 85 and over who were born in prewar or wartime, it can be assumed inevitable that older adults, particularly older women, do not disclose their will and preferences to third parties because they were not educated to do so. It can be assumed that the baby boom generation, who were born in the postwar and are familiar with democracy, will have initiatives to change people's behavioural patterns in the future based on the value of individual autonomy.

In the State of Victoria, welfare practitioners often use the term "dignity of risk" (Ibrahim and Davis, 2013). This implies providing measures against the risk of harm expected from a certain action and taking predetermined actions within a risk-controllable range. For example, older adults with dementia should be treated on a case-by-case basis to determine whether to stop them from driving. The dignity of risk should be boldly challenged to the extent that risk can be controlled. There is a sense of the value of individual autonomy and the principle of necessity, and the protection of the individual by the supporter should be kept to the barest minimum.

In contrast, in the field of welfare in Japan, if a practitioner recognizes a risk, they should not expose the person being supported to this risk. At the root of this is the value that a person should suppress their desires to harmonize with society. This is the idea of objective best interests. This sense of value may be included in the community of Japan. The debate about which value should be respected is not openly held, and things are often decided behind the scenes in Japan. Together with this traditional custom is the apparent feeling by the silent majority that one should know what values matter most without being told.



It is, however, recommended now that Japanese people, particularly the baby boom generation and younger generations than them, should debate such values in public for the betterment of their society and participation in social affairs according to the people's own initiatives for establishing the value of individual autonomy.

## Conclusion

The relationship between law and policy and people's behavioural patterns in an aged society has been discussed by drawing from comparative guardianship law and policy studies on Japan and the State of Victoria. Appropriate law and policy frameworks for the future should be established, and efforts should be made to understand the people's concerns. A good combination between law and policy and understanding people's behavioural patterns is assumed to be of paramount importance. Human society is made up of people's invisible thoughts and accumulated values, which are shared as unwritten rules in a certain group, and these unwritten rules are impolitely disseminated to outsiders. For this reason, people's behavioural patterns may be difficult for outsiders to understand, and this becomes a barrier when conducting comparative law studies. Besides the language barrier, there is a deeper and less tangible barrier. Clarifying this barrier domestically is the key to law adaptation in an aged society. By reviewing people's behavioural patterns in Japan and the State of Victoria, two keywords appear essential in practice under the guardianship law and policy: one is "family reliance"; the other is "value of individual autonomy." These two contradictory keywords are useful for understanding and explaining people's behavioural patterns in the two states. It can be concluded that it is appropriate to consider guardianship laws and policies based on these two keywords.

## References

- Australian Bureau of Statistics (2017) 2071.0—Census of population and housing: Reflecting Australia—stories from the census, 2016 Available at: <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/2071.0~2016~Main%20Features~Cultural%20Diversity%20Article~60> (accessed April 3, 2023).
- Australian Guardianship and Administration Council (AGAC). (2022) Australian adult guardianship orders 2020/21. Available at: [https://www.agac.org.au/assets/images/AGAC-Sterilisation-Data-Report-2020-2021\\_2022-03-14-014605.pdf](https://www.agac.org.au/assets/images/AGAC-Sterilisation-Data-Report-2020-2021_2022-03-14-014605.pdf) (accessed April 3, 2023).
- Australian Institute of Health and Welfare (AIHW). (2021) Older Australians. Available at: <https://www.aihw.gov.au/reports/older-people/older-australians/contents/demographic-profile> (accessed April 3, 2023).
- Cabinet Office of Japan (2022) Annual report on the ageing society 2021 [Summary]. Available at: <https://www8.cao.go.jp/kourei/english/annualreport/2021/pdf/2021.pdf> (accessed April 3, 2023).
- Carney T and Tait A (1997) *The Adult Guardianship Experiment: Tribunals and Popular Justice*. Sydney: The Federation Press.
- Courts of Japan (2023) The annual overview of adult guardianship cases [in Japanese] Available at: [https://www.courts.go.jp/toukei\\_siryou/siryu/kouken/index.html](https://www.courts.go.jp/toukei_siryou/siryu/kouken/index.html) (accessed April 3, 2023).
- Department of Home Affairs, Australian Government (n/a) Multicultural affairs. Available at: <https://www.homeaffairs.gov.au/about-us/our-portfolios/multicultural-affairs> (accessed April 3, 2023).

- Fukuda F (2018) Incapacity planning used by revocable living trust: Proposal on estate planning for incapacitated people. [in Japanese] *Bulletin of Graduate Studies of Law, Chuo University* 47:23–39.
- Ibrahim JE and Davis MC (2013) Impediments to applying the “dignity of risk” principle in residential aged care services. *Australasian Journal on Ageing* 32(3): 188–193 Available at: doi.org/10.1111/ajag.12014 (accessed April 3, 2023).
- King C et al. (2011) For love or money: intergenerational management of older Victorians’ assets, Protecting Elders’ Assets Study. Monash University, Eastern Health Clinical School. Available at: [https://www.eapu.com.au/uploads/research\\_resources/VIC-For\\_Love\\_or\\_Money\\_JUN\\_2011-Monash.pdf](https://www.eapu.com.au/uploads/research_resources/VIC-For_Love_or_Money_JUN_2011-Monash.pdf) (accessed April 3, 2023).
- Kokami S and Sato N (2020) Peer Pressure: Why Japanese Society is Stuff? [in Japanese] Tokyo: Kodansha Ltd., Publishers.
- Ministry of Health, Labour, and Welfare (MHLW) of Japan. (2020) Guidelines for adult guardians based on supported decision-making. [in Japanese] Available at: <https://www.mhlw.go.jp/content/000750502.pdf> (accessed April 3, 2023).
- Ministry of Health, Labour, and Welfare (MHLW) of Japan. (2021) Elder abuse annual survey in fy2020. [in Japanese] Available at: [https://www.mhlw.go.jp/stf/houdou/0000196989\\_00008.html](https://www.mhlw.go.jp/stf/houdou/0000196989_00008.html) (accessed April 3, 2023).
- Ministry of Justice of Japan. n/a Adult guardianship registration system. Available at: <https://www.moj.go.jp/EN/MINJI/minji17.html#a21> (accessed April 3, 2023).
- Nakane C (1970) *Japanese Society*. Oakland: University of California Press.
- Nakata Y (2014) The honesty and facade of *honne* and *tatemae*. Available at: <https://blog.gaijinpot.com/honne-tatemae/> (accessed April 3, 2023).
- Office of the Public Guardian of Singapore (2023) Indicators of activities. Available at: <https://www.msf.gov.sg/opg/Pages/Indicators-of-Activities.aspx> (accessed April 3, 2023).
- Regional Guardianship Promotion Project (2023) Overview of the adult guardianship system. [in Japanese] Available at: <https://kouken-pj.org/about/current-status/> (accessed April 3, 2023).
- Sukimoto, T (2009) Contemporary challenges of larceny committed against relatives. *Seijo Jurisprudence* 78: 95–120. [in Japanese] Available at: [https://www.seijo-law.jp/pdf\\_slr/SLR-078-095.pdf](https://www.seijo-law.jp/pdf_slr/SLR-078-095.pdf) (accessed April 3, 2023).
- Todd E (2022) *Où en sommes-nous? Une esquisse de l'histoire humaine (Where are we? A sketch of human history; Japanese edition)* Tokyo: Bungeishunju Ltd.
- United Nations (UN) Department of Economic and Social Affairs. (2022) *World population prospects 2022*. Available at: <https://population.un.org/wpp/> (accessed April 3, 2023).
- Victorian Law Reform Commission (VLRC). (2012) *Guardianship: Final report no. 24*. Available at: [https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/Guardianship\\_FinalReport\\_Full-text.pdf](https://www.lawreform.vic.gov.au/wp-content/uploads/2021/07/Guardianship_FinalReport_Full-text.pdf) (accessed April 3, 2023).



Willmott L et al. (2017) Guardianship and health decisions in China and Australia: A comparative analysis. *Asian Journal of Comparative Law* 12(2): 371–400.

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