

【日 時】9 月 12 (金) 11 : 00~12 : 30

【会 場】9 号館 5 階 第一会議室

【発表者】青木 仁美 助教

ROMBS SOROCZAN, Elvyra 助教

1. 青木 仁美 助教 (Hitomi Aoki) : 11 : 00~11 : 40

「高齢者の法的保護における立法的課題」

成年後見制度は、判断能力が不十分な成年者を法的に保護するための民法上の制度である。民法は、契約を締結するために、一定の判断能力を必要とする。とすると、認知症などで判断能力を失えば、1 人で契約を締結できなくなる。その結果、社会生活を送ることが困難になる。そこで、本人の代わりに、契約を締結する成年後見人を家庭裁判所に任命してもらうのである。成年後見人が任命されると、本人は、その効果として本人自身の契約締結能力を失う。この成年後見制度に関して、現在、次のような問題が生じている。第 1 に、本人がどの範囲において契約締結能力を失うかは、民法が本人の能力を 3 段階に分け、自動的に決定している。この点が差別的であるといわれている。第 2 に、実務では成年後見人は医療同意を求められることが多い。しかし、現行法の解釈によれば、成年後見人は医療同意権を有しない。このため、立法的解決が求められている。

このような問題点が生じるのは、社会の法化、高齢化および人権意識の高まりによるものと考えられる。時代の変化を制度にどのように反映させるのかを検討するために、他国（主としてオーストリア法）の法と比較することで、今後の高齢者の法的保護のあり方を探る。

The legislative issues in the legal protection of the elderly

The adult guardianship is a system to protect individuals who have insufficient mental capacity to make decisions for themselves. In Japan it is stipulated in the Civil Code. In order to conclude the contract, the Civil Code requires people to have mental capacity to make decisions. If a person lacks this capacity due to a dementia, it will be impossible for him/her to conclude the valid contract by oneself. As a result, it may be difficult to send the social life. Therefore, the family court will appoint the adult guardian who has the right to conclude the contract on behalf of the principal. Once the adult guardian is appointed, the principal will lose his/her legal capacity (qualification) to conclude the contract by oneself. In regard to this adult guardianship, currently, following problems have been pointed out.

First, under the rules of the Civil Code, the principal's legal capacity is divided into three stages and his/her capacity to conclude the valid contract will be restricted automatically according to that stage. It is said that this point is discriminatory. Second, in practice, guardians are often required to consent the medical treatment on behalf of the principal. However, according to the interpretation of the current law, guardian doesn't have the right to consent to medical treatment on behalf of the principal. Therefore, legislative resolution is needed.

It is considered that the cause of those problems are the result of increasing legal intervention in the social life, ageing of society and heightened awareness of human rights. The purpose of this research is to consider how to reflect the changes of the times on the legal system and explore the way of legal protection for the elderly in the future. To do so, it compares the Japanese Civil Code with the law of the other countries, mainly Austria.

2. ROMBS SOROCZAN, Elvyra 助教 : 11 : 50～12 : 30

Title: Human Flourishing: Its Context-Specificity and Meaning in Japanese Higher Education



Human flourishing has long been considered the epitome of optimal personal and societal functioning. This talk will focus on the notion of human flourishing as a significant, yet often elusive concept in philosophy and the social sciences.

The talk is divided into three parts. Part I begins with definitional issues, considering the linguistic roots and colloquial connotations of the term and

some of the major theoretical perspectives on flourishing in philosophy (e.g. Aristotle), psychology (e.g. the positive psychology movement), and other social sciences (e.g. Marx, Durkheim).

Part II examines the notion of 'context-specificity' in human flourishing - or the idea that the nature of human flourishing is dependent on the physical, social, historical and other contexts in which it occurs, and that our knowledge on it is equally dependent on the context of disciplinary values and assumptions according to which it is constructed. A

'relational' ontological perspective is used as a theoretical foundation to argue that, contrary to much of positive psychology's work to date, it is worthwhile to examine human flourishing within concrete contexts - *in situ* - and that to this end more interdisciplinary research is needed on the phenomenon of context-specific human flourishing.

Finally, Part III introduces the current research project being carried out at WIAS. The project aims to explore the social construction and practice of human flourishing within the context of Japanese higher education. After discussing the project's key research questions and methods, the talk will end with a review of the anticipated theoretical and social outcomes.