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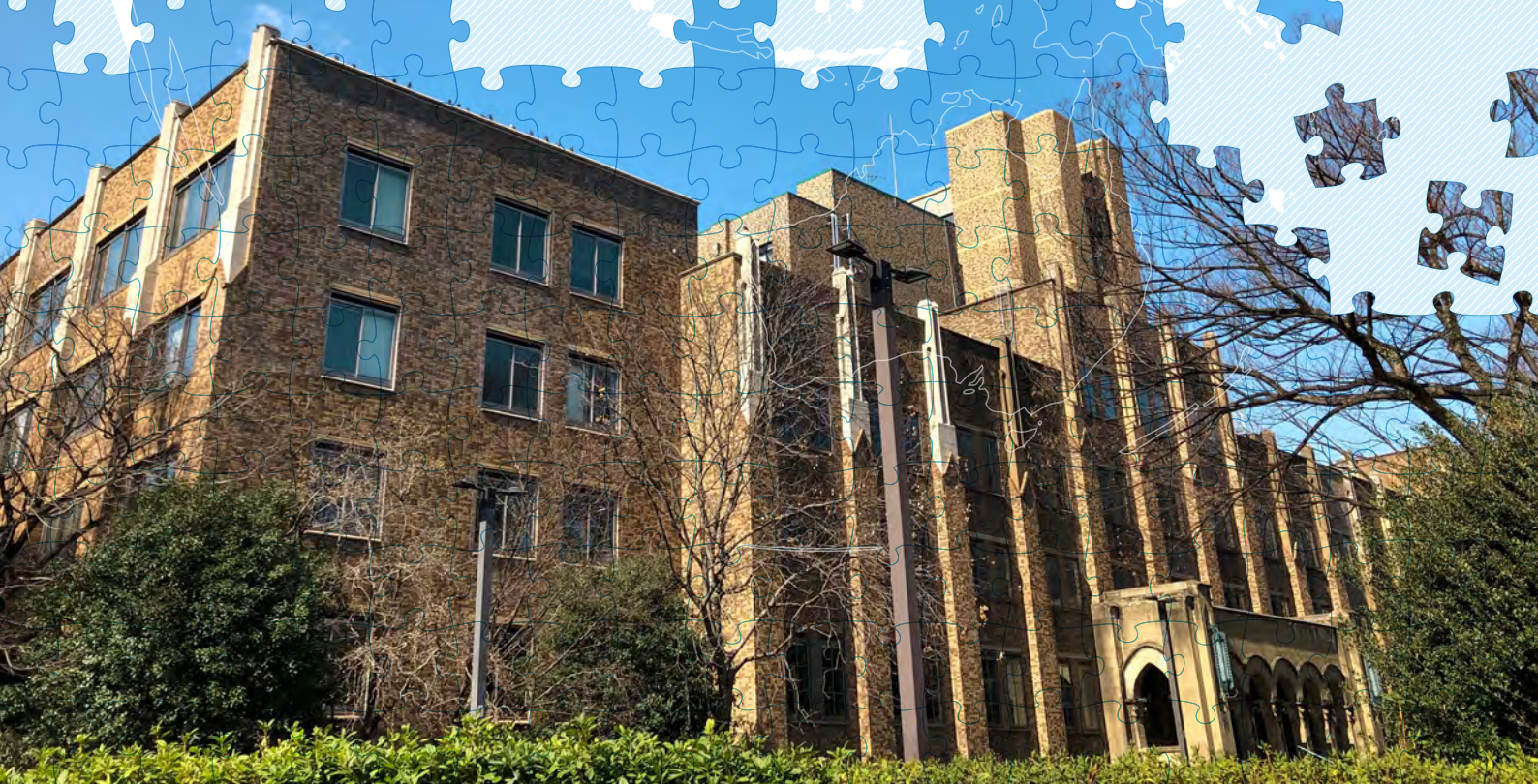
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# CSRDA Discussion Paper

## Legislating Filial Obligations

### Property Rights and Filial Piety in Shogunate Japan



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# Legislating Filial Obligations

Property Rights and Filial Piety in Shogunate Japan\*

Masaki Nakabayashi<sup>†</sup>

## Abstract

Continental European countries and Japan are running far larger welfare states, particularly in terms of elderly care, than their Anglo-Saxon counterparts. One reason for this is the filial obligations of adult children toward their retired parents as mandated by family law. In continental Europe and Japan, the retreat of the state implies an increase in the burden incurred by the family, which encourages both liberals and paternalistic conservatives to support such welfare states. Japan is in the same camp as continental Europe because of its Civil Code of 1896, modeled on French law. However, the essential reason why Japan followed French law in the first place was that early modern (Tokugawa) family law before the Meiji Restoration of 1868 was consistent with French law in terms of filial obligations. This paper investigates the process under which filial support became a legal mandate in the eighteenth century. Early modern Japan transformed filial support as a norm into a legal mandate by setting the performance of filial obligations as a condition for property rights protection in the age of Japan's first aging population in the eighteenth century.

**Keywords:** Filial obligations; duty of support; great divergence of welfare state; property rights; inheritance; stem family; shogunate Japan

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# 1 Introduction

Aging has accelerated in Japan since the 1990s. Accordingly, per capita gross domestic product has stagnated. Aging accompanying a stagnant economy poses imminent social security risks to a country. Japan is currently facing such circumstances. The Japanese welfare state deeply supports family security, as do continental European welfare states. Thus, understanding the structure and historical origins of family security allows us to draw policy implications for sustainable social security in Japan and possibly continental European countries as well.

Japan's current aging population is not the first in the country's history since it began its continuous growth in late medieval times. Japan's first aging population appeared in the early eighteenth century, accompanied by a decelerated growth in per capita GDP. Facing this challenge, family security, particularly the filial responsibility that obliges adult children to support their elderly parents, was established as a measure to address the aging of the population accompanying decelerated economic growth. This paper investigates the process of the legislation of filial obligations in the early to mid-eighteenth century in Japan.

Family laws in continental Europe and Japan stipulate the filial obligation of adult children to support their elderly parents, while those in Anglo-Saxon countries do not, or, even if they do stipulate such, the requirement is not enforced (Twigg and Grand, 1998, DeBona, 2014, Nakabayashi, 2019). The divergence casts a large shadow on current welfare states. Among seven major advanced economies, the percentage of GDP dedicated to social security contributions, which essentially indicates the size of the welfare state, as of 2020, were 15.04% in Germany, 14.83% in France, 13.57% in Italy, and 13.38% in Japan but only 6.74% in the UK, 6.38% in the US, and 4.89% in Canada (Organisation for Economic Co-operation and Development, 2023). At the macroeconomic level, countries whose family laws stipulate filial obligations tend to run far more

extended welfare states.

At the national legislation level, Germany stipulated the “social right” in the Constitution of the German Reich of 1919, followed by similar legislation in Japan and France in 1946 and Italy in 1947. In 1946, Japan was under occupation by the US, and a draft of an amendment of the Constitution of the Empire of Japan suggested by the US did not include this “social right.” The “social right” stipulated in Article 25 of the Constitution of Japan was added to the US-drafted amendment plan by the Imperial Diet following Germany’s example. This divergence is not yet a historical past. [Jung et al. \(2014\)](#) demonstrated that the divergence in the provision of social benefits between common law countries such as the US and civil law countries and mixed civil law countries such as Japan is enormous.

Furthermore, the divergence between the group of continental European countries and Japan and that of Anglo-Saxon countries has deepened in terms of long-term care insurance. Germany introduced universal mandatory long-term care insurance in 1994, and Japan followed suit in 1997 ([Cuellar and Wiener, 2000](#), [Campbell and Ikegami, 2000](#), [Campbell et al., 2010](#)). In contrast, despite support from experts ([Glendinning, 2007](#), [Stevenson et al., 2010](#), [Ng et al., 2010](#), [Favreault et al., 2015](#)), the UK and US have both failed to implement a similar policy.

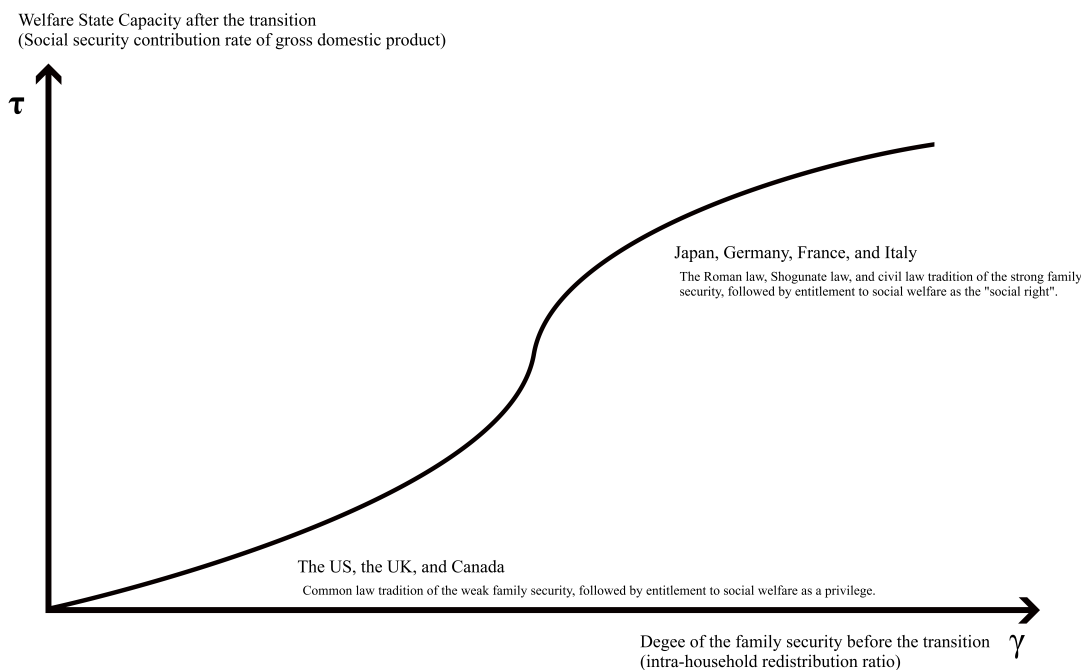
Along with the great divergence between the continental European and Japanese camp and the Anglo-Saxon one, also within the group of continental European countries and Japan, the historical origins of family law and different practices in family life affect the implementation of long-term care insurance ([Roland et al., 2021](#)). By making comparisons among continental European countries and Ireland, [Deindl and Brandt \(2011\)](#) demonstrated that economic transfers from adult children to elderly parents tends to be greater in northern continental European countries, whose welfare states are larger. The greater role of the family in such societies, particularly in terms of greater filial

obligations, predicts the larger size of the welfare state among this group. Meanwhile, [Dykstra and Fokkema \(2011\)](#) demonstrated that involved support for retired parents is a more common norm in southern European cultures. Additionally, [Kalmijn and Saraceno \(2008\)](#), [Merz et al. \(2009\)](#) showed that within continental European countries, endogenous familialism and the heterogeneous quality of relationships between parents and children affect the degree of filial support provided.

Heterogeneity is also observed within Anglo-Saxon countries. [Evandrou et al. \(2018\)](#) argued that filial support tends to be performed by adult children who received greater help from their parents in earlier stages of their life in the UK.

While intra-national heterogeneity both in the continental European and Japanese camp and the Anglo-Saxon camp is not negligible, however, the aggregate sizes of welfare states between the continental European and Japanese camp and the Anglo-Saxon camp is evidently divergent as mentioned above. [Nakabayashi \(2019\)](#) provided an economic explanation for this great divergence of welfare states using a growth model. If the family sector takes greater (less) responsibility in risk sharing, the replacement of the role by the state tends to increase (decrease) economic growth. Thus, having the state replace the family's role in security in Germany and Japan could accelerate economic growth and hence could be Pareto improving, but this is not the case in the US or UK. Figure 1 summarizes the theoretical results of [Nakabayashi \(2019\)](#), where the horizontal axis ( $\gamma$ ) denotes the degree of family responsibility, and the vertical axis ( $\tau$ ) denotes the maximum social security tax rate that does not lower economic growth. Thus, [Nakabayashi \(2019\)](#) argues that the aggregate national-level difference between Anglo-Saxon countries and Japan/continental European countries is determined by whether the mutual intergenerational support within a family is formalized by family law and whether the welfare state is designed to substitute for intergenerational support within a family.

Figure 1: Path dependency in the transition from family security to the welfare state.



To that extent, [Nakabayashi \(2019\)](#) conjectured, the family role precedent has determined the size and implementation of modern welfare, notably elderly care, through the state. Japan's current family law, part of the Civil Code, was modeled on French law and enacted in 1898. In that sense, Japanese family law is an offshoot of continental European family law. However, French family law was acceptable in the first place because it was already consistent with family law under the Edo (Tokugawa) shogunate that ruled Japan until 1868. Therefore, to understand why Japan adopted universal mandatory long-term care insurance and is running a large welfare state, we need to investigate when these filial obligations were enacted in shogunate (Tokugawa) Japan. To our knowledge, there has not yet been any study that specified the enactment as a legal mandate, not only as a norm, of filial obligations in shogunate Japan. This study investigates the issue by interpreting shogunate law. Such a study would help in man-

aging long-term care insurance in Japan and in continental European countries because the tradition of filial obligation has a long history in which coherent support for the current welfare states root. It would be some of help in understanding the challenges in introducing long-term care insurance in other countries, such as the US and the UK.

The rest of the paper is organized as follows. Section 2 clarifies the current role of the family and the state in protecting “social rights” in Japan. Section 3 analyzes the changes in inheritance practices in the early eighteenth century and filial support encouraged by the shogunate. Section 4 describes filial support as an obligation enacted by the law in the mid-eighteenth century. Section 6 concludes the paper.

## **2 The responsibilities of the state and the family in Japan**

The Constitution of Japan of 1946, which was an amendment of the Constitution of the Empire of Japan of 1889, stipulates social rights in Article 25 as follows: “All people shall have the right to maintain the minimum standards of wholesome and cultured living.”<sup>1</sup> The first law to substantialize the social rights stipulated by the constitution was the Public Assistance Act of 1946, whose aim was defined in Article 1 as follows: “The purpose of this Act is for the State to guarantee a minimum standard of living as well as to promote self-support for all citizens who are in living in poverty by providing the necessary public assistance according to the level of poverty, based on the principles prescribed in Article 25 of the Constitution of Japan.”<sup>2</sup> That is, to realize the purpose of Article 25 of the constitution, the government provides financial support to warrant minimum income for civilized life. However, Paragraph 2 of Article 4 of the Public Assistance Act of 1946 also stipulates that “any support given by a person responsible for support prescribed by the Civil Code (Act No. 89 of 1896) and any assistance

prescribed by any other Act shall be provided in precedence to public assistance under this Act.”

The “support prescribed by the Civil Code” is described as follows: “(1) Lineal relatives by blood and siblings have a duty to support each other,” and “ (2) if special circumstances exist, the family court may also impose a duty of support between relatives within the third degree, in addition to the case prescribed in the preceding paragraph” in Article 877 of the Civil Code<sup>3</sup> ; additionally, “in the case where there exist several persons under a duty to give support, and agreement has not, or cannot be, reached between the parties with respect to the order in which they are to give support, the family court shall determine the order. In the case where there exist several persons entitled to support and the financial capacity of the person under a duty to give support is insufficient to support them all, the same shall apply”, according to Article 878.<sup>4</sup> A point is that “a duty to support each other” of “lineal relatives by blood and siblings” in Article 877 of the Civil Code is bidirectional such that adult children have a filial obligation to support their elderly parents and the duty is enforceable by the court pursuant to Article 878 of the Civil Code. The reciprocity of obligation of support (*obligation alimentaire*) between children and parents and possible enforcement of the obligation by the court are similarly stipulated by the French Civil Code in Articles 205–207 (Bénabent, 2022, 707–708).<sup>5</sup>

Therefore, the social rights guaranteed by Article 25 of the Constitution of Japan of 1946 mandate that the state support people in poverty only if their family members fail to support them, including through filial obligations. Thus, the welfare state was designed as a substitute to family security, including filial obligations, to guarantee social rights. Indeed, Article 29 of the Public Assistance Act of 1946 stipulates that municipal government officials “may investigate or request a report from,..., a person responsible for support of the person requiring public assistance with regard to,..., the



person responsible for his/her support.”<sup>6</sup> In practice, the state will provide benefits only if these lineal family members such as adult children are unable to afford such support (Inaba, 2011).

Thus, the current enormous welfare state of Japan was built as a substitute for family security. Family security stipulated in the Civil Code of 1896, including filial obligations, was directly modeled on French law, because the French system was consistent with early modern Japanese family law before the Meiji Restoration of 1868. Therefore, the next step in this study is to investigate when filial obligations became a formal legal mandate in early modern Tokugawa Japan.

### **3 Transformation of inheritance and filial responsibility**

#### **3.1 Protection of individual households’ property rights**

Before the Edo (Tokugawa) shogunate was established in 1600, individual farming households did not have property rights. Instead, village communities, based on agreements with lords who governed the villages, owned farmland plots cultivated by villagers and village communities assigned farmland plots to member families. This property system naturally resulted in village communities, rather than adult children, being responsible for supporting elderly villagers (Kurushima, 2004).

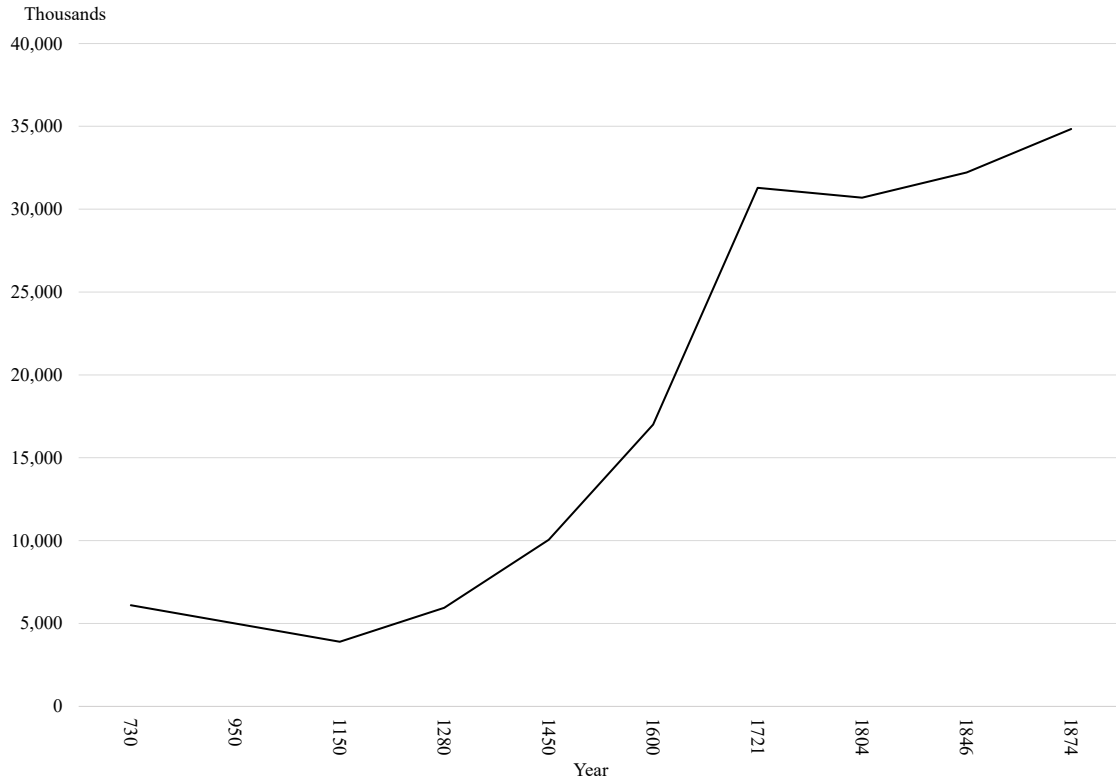
After the establishment of the shogunate, the shogunate and lords vested farming households with property rights over the plot of farmland the household cultivated through cadastral surveys in the late seventeenth century (Mandai and Nakabayashi, 2018, Nakabayashi, 2020, 2021). The change in property system implied that the system to support elderly people should accordingly be transformed. As described in the

next section, the need was less compelling in the seventeenth century when large-scale reclamation was implemented, and the population was also rapidly growing. However, the creation of a system to support the elderly within households became an urgent issue in the eighteenth century.

### **3.2 Japan's first aging population in the early eighteenth century**

The establishment of the Edo shogunate ended the period of warfare in Japan from the fifteenth to sixteenth centuries. The shogunate and domain lords invested massive amounts in building city and river dikes. Water control by building dikes enabled the reclamation of alluvial plains in the lower reaches of large rivers throughout the seventeenth century. This meant a rapid increase in land input and resulted in rapid growth in the population from 17 million in the early seventeenth century to 30 million in the early eighteenth century (Figure 2). Since the number of vassal samurai households was fixed in each domain, population dynamics were driven by civilians who were mostly farmers. The civilian population numbered 26 million in the early eighteenth century; it decreased to 25 million in the late eighteenth century, and recovered, again increasing to 27 million in the early nineteenth century ([Nakamura and Miyamoto, 1982, 233](#)).

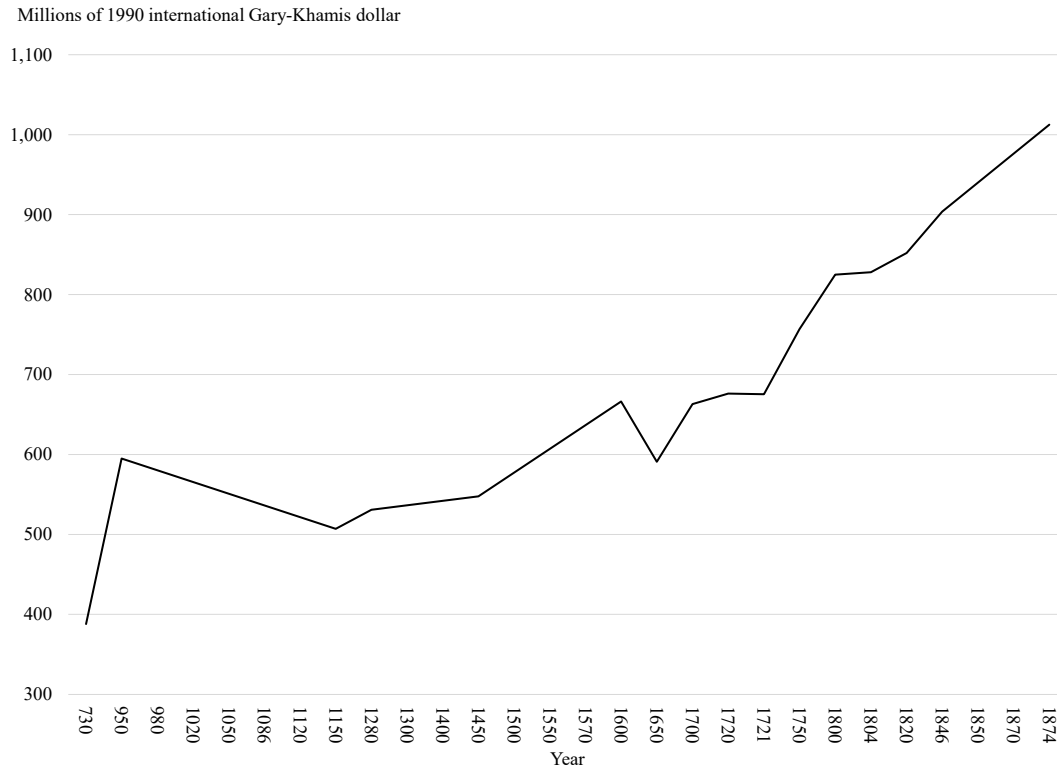
Figure 2: Population of Japan, 730–1874.



*Source:* Nakabayashi et al. (2020).

Population growth in the seventeenth century was accompanied by productivity improvement. After a spike around 1600 due to the city-building boom, per capita GDP temporarily fell and then strongly recovered in the late seventeenth century (Figure 3).

Figure 3: Per Capita Gross Domestic Product of Japan, 730–1874.



Source: Nakabayashi et al. (2020)

However, by the early eighteenth century, the large-scale reclamation of alluvial plains in the lower reaches of large rivers stopped because reclaimable alluvial plains had been reclaimed, which put an end to the increase in land input. Since Japan adopted an isolationist policy regarding international trade, the cessation of domestic land input increase capped the resources available to feed the population unless and until land productivity of agriculture improved.

The conditions led to the modest shrinking of the population in the first half of the eighteenth century (Figure 2), before it began to modestly grow again in the nineteenth century once supported by productivity improvement (Figure 3). Life expectancy at age

15 in early modern Japan is estimated to have been stably between 40 and 45 for males and 45 and 50 for females from the late seventeenth century to the mid-twentieth century (Hanley, 1974, Johansson and Mosk, 1987, Jannetta and Preston, 1991, Jannetta, 1992). When the population stabilizes in a society with a stable life expectancy, the society inevitably experiences aging. The early eighteenth century was thus the first age of Japan's aging population (Ochiai, 2006, 202).

### 3.3 From partible to impartible inheritance

The end of the increase in land input due to the completion of large-scale reclamation in the early eighteenth century was accompanied by a drastic change in inheritance practice. When land input was increasing through large-scale reclamation in the seventeenth century, partible inheritance was a common practice among farming households because an increase in land input enabled an increase in farming households. Once this land input increase ceased, inheritance customs accordingly transitioned to impartible inheritance (Otake, 1982, 153–245) and (Otou, 1996, 64–65, 217–274). As in Europe (Fauve-Chamoux, 1995), impartible inheritance helped stabilize stem family system.

The shogunate's regulations prompted this transition toward impartible inheritance. To maintain a sizeable owner-farmer class as the tax basis and for social stability, the shogunate regulated partible inheritance in 1673 such that inheritance of a plot of farmland should be impartible if the official expected output of an inherited plot of farmland should be less than 10 *koku* (1,804 liters) of rice.<sup>7</sup> The regulation was reconfirmed in 1713.<sup>8</sup> The regulation was further tightened in 1721 such that inheritance of a plot of farmland should be impartible if the estimated output of inherited plot of farmland should be less than 20 *koku* (3,608 liters).<sup>9</sup> Furthermore, in 1722, the shogunate regulated farmers' formation of a branch house.<sup>10</sup>

Property rights protection for farmland plots was implemented through land regis-

tration with the village mayor when each plot was inherited. If an application for land registration due to inheritance did not satisfy the legal requirements, the registration was not approved. Thus, the regulations almost forced smallholders to adopt impartible inheritance through this property rights protection mechanism.

Constrained by stagnant land input and prompted by legislation, the stem family, represented by the current household head, became the sole owner of each household's farmland from the late seventeenth to the early eighteenth centuries. As in Western continental European countries (Fauve-Chamoux, 2005), the stem family system prevailed in Japan (Saito, 1998, 2000).

### **3.4 Elderly parents as dependent family members**

The transformation in inheritance customs and the formation of the stem family system changed the status of retired parents. Before impartible inheritance prevailed, it was common for retired parents to retain part of the family's farmland after their succession as household heads. Retired parents financed their lives by the revenue from retained property. However, after impartible inheritance customs became dominant, the entirety of the family property was inherited by the succeeding household head, and retired parents became dependent family members of the new household head, who might be either a consanguineous or adopted son (Otake, 1990). That is, legislation became necessary to motivate, and if possible, force, the succeeding household heads to support their retired parents or parents-in-law.

## 4 Filial support: From encouragement to obligation

### 4.1 From parental responsibilities to filial responsibilities

In 1649, the shogunate promulgated an order stipulating that people be dutiful (*koukou*) to their parents. However, at this time, what the shogunate meant by “being dutiful (*koukou*)” was as follows: “first, be healthful for oneself, do not drink too much, [and] keep intimate relationships with brothers”; that is, being dutiful primarily meant being a good dependent child but not necessarily performing filial obligations.<sup>11</sup> Then, in 1650, the shogunate enacted an ordinance ordering parents not to abandon a child on the grounds that the child was not dutiful (*fukou*) in the City of Edo (Tokyo).<sup>12</sup> In 1670, the shogunate confirmed the prohibition of abandonment, and in case of difficulty in raising their children, if the parents were servants, they were instructed to consult their master; if the parents were farmers in the shogunate’s domain, they should consult the magistrate; and if the parents were farmers in other domains, they should consult the mayor and their neighbors (within their five-household unit (*gonin gumi*)) about how to raise their children.<sup>13</sup> From the early to the mid-seventeenth century, when the Japanese population was rapidly growing (Figure 2), the shogunate’s legislation emphasized parents’ responsibilities toward their children.

Typical cases of the enforcement of the ban on abandonment were as follows. If parents abandoned their children due to economic difficulties, the parents were arrested and imprisoned first, instructed to raise their children, and released. Or, the parents were considered to be unable to raise children, and they were not released and died in custody and the children were entrusted to the five-household unit (*gonin gumi*).<sup>14</sup> The duty of support was applied also to those who adopted children. If an adult adopted a child and abandoned the child to die or disappear, the adoptee was executed.<sup>15</sup>

In 1682, the shogunate stipulated “loyalty and dutifulness (*chūkou*)” and intimate

relationships between husband and wife and among siblings and relatives in a shogunate proclamation posted on local bulletin boards (*kousatsu*) to guide civilians; this proclamation was applicable regardless of whether a household was under the shogunate or a lord, and it also reconfirmed the ban on trading in humans, that is, the selling of children.<sup>16</sup>

In 1711, the shogunate amended the proclamation, this time stipulating that subjects were expected to be “intimate with [their] parents, children, siblings, spouses, and relatives,” thus clarifying the requirement for mutual help within a family, as well as reconfirming the ban on trading in humans.<sup>17</sup> Therefore, from the late seventeenth to the early eighteenth centuries, shogunate legislation began to emphasize mutual dutifulness between parents and children while reconfirming parental responsibilities.

From the 1680s, the shogunate began to reward honorable behaviors of civilians (Yamashita, 1969, 318). In particular, from the 1720s, the shogunate’s rewards focused more on civilians who took care of their parents and parents-in-law (Otake, 1990, 193–194).<sup>18</sup> Such encouragement of support was not limited to the shogunate domain but was also implemented in other domains. In 1789, the shogunate ordered magistrates in the shogunate domain, lords of other domains, and Buddhist temples and shrines that governed their own benefice to collect cases of honorable recognition of good behaviors.<sup>19</sup> The collected cases were edited by professors of the Shogunate Academy (*Gakumonjo*) (Yamashita, 1969, 314) and published as 50 volumes titled *Kankoku Kougiroku* (*Official Publication of Records of Dutifulness*) in 1801 (*Gakumonjo* (The Shogunate Academy), 1999c,a,b).<sup>20</sup> The *Kougiroku* included 8,579 cases that included 8,610 civilians across Japan, mainly since the 1680s (Yamashita (1969), 309–326; Sugano (1999a), 3–5; and Sugano (1999b)).

The *Kougiroku* classified good behaviors into 1) children’s dutifulness to their parents and parents-in-law (*koukou*), 2) servants’ loyalty to their masters (*chūgi*), 3) servants’



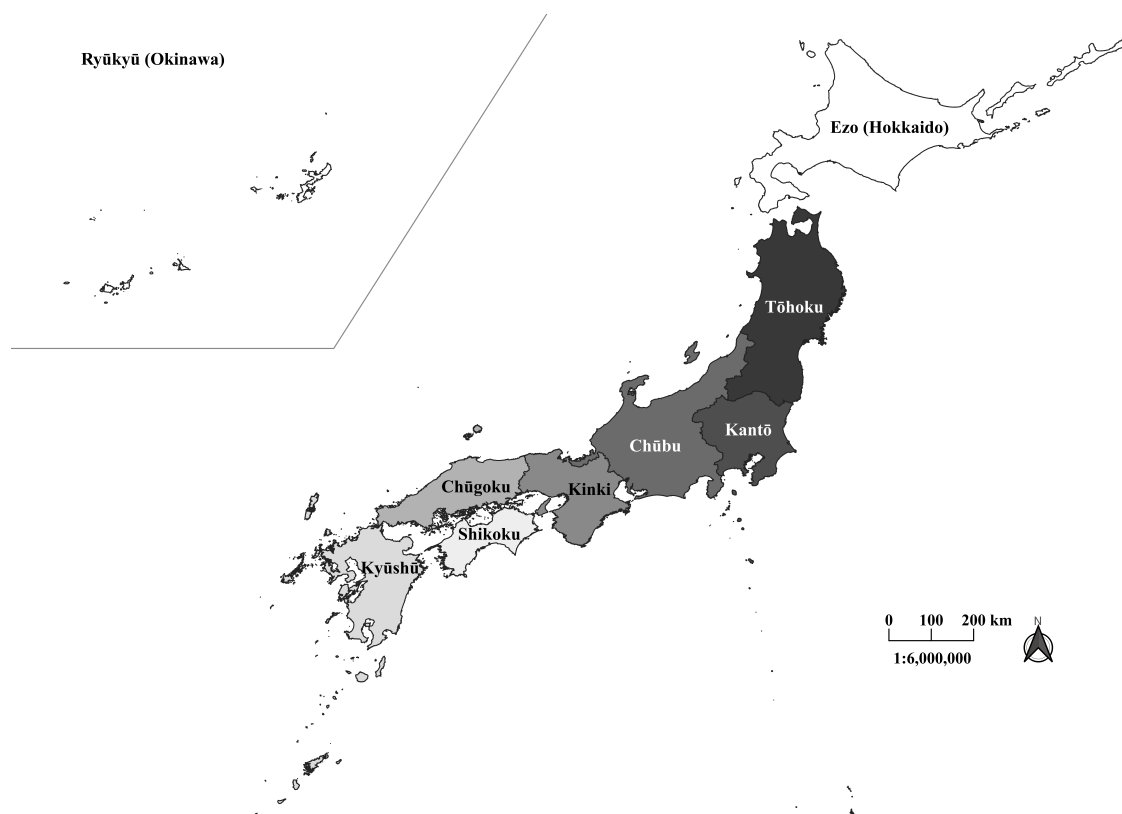
allegiance to their masters (*chūkou*), 4) faithfulness (virtue) of women (*teisetsu*), 5) intimate relationship between siblings (*kyoudai mutsumaji*), 6) intimate relationship between family members (*kanai mutsumaji*), 7) intimate relationship between relatives (*ichizoku mutsumaji*), 8) public moral (*fūzoku yoroshi*), 9) honesty (*keppaku*), 10) beneficence (*kitoku*), 11) exerting efforts for agriculture (*nougyou shusse*), and 12) children’s revenge for their parents (*kataki uchi*), as shown in Table 1. While the law in 1711 stipulated “intimate with [their] parents, children, siblings, spouses, and relatives” as described above, rewards heavily concentrated in dutifulness to parents and parents-in-law, which mounted to 64% of the total, and the tendency was common across Japan.

Table 1: Honorable behaviors included in *Kankoku Kougiroku* (Official Publication of Records of Dutifulness).

Region	Dutiful ( <i>Koukou</i> )	Loyal ( <i>Chūgi</i> )	Allegiant ( <i>Chūkō</i> )	Faithful ( <i>Teisetsu</i> )	Intimate relationship between siblings ( <i>Kyoudai mutsumaji</i> )	Intimate relationship between family members ( <i>Kanai mutsumaji</i> )	Intimate relationship between relatives ( <i>Ichizoku mutsumaji</i> )	High public moral ( <i>Fūzoku yoroshi</i> )	Honest ( <i>Keppaku</i> )	Beneficent ( <i>Kitoku</i> )	Exerting efforts for agriculture ( <i>Nogyō shusse</i> )	Revenge for parents ( <i>Kataki uchi</i> )	Total
Tōhoku	873	229	35	71	24	24	4	5	351	57	1	1,674	
Kantō	584	45	9	72	8	4	30	1	260	91	3	1,107	
Chūbu	889	66	9	15	20	2	1	16	148	21	21	1,187	
Kinki	863	16	3	10	16	21	6	1	168	86	3	1,190	
Chūgoku	703	20	5	8	20	19	5	1	153	11	3	959	
Shikoku	465	21	6	4	4	8	1	2	58	16	583		
Kyūshū	1,051	167	5	23	13	7	102	2	268	116	1,754		
Unknown	95	3	1	5	14	3	2	24	9	9	156		
Total	5,523	567	73	208	119	88	150	26	1,430	407	7	8,610	
Share	64.1%	6.6%	0.8%	2.4%	1.4%	1.0%	1.7%	0.3%	16.6%	4.7%	0.1%	100%	

Source: Yamashita (1969), 319.

Figure 4: Japan in early modern times.



*Notes:* While the Kingdom of Ryūkyū (Okinawa) was militarily controlled by the Satsuma Domain of Japan since 1609, it continued to be a tributary country both to Tokugawa Japan and the Qing Dynasty of the Empire of China before the Meiji Restoration of 1868, and became a domain of Japan in 1872. While the Ezo (Hokkaido) domain was militarily controlled by the Lord Matsumae or the shogunate, depending on the periods, before the Meiji Restoration, inhabitants were dominantly native *Ainu* people who retained broad autonomy. Therefore, the shogunate law was not enforced in Ryūkyū (Okinawa), and, except for Japanese civilians, the Ezo (Hokkaido) domain either.

Out of 5,523 civilians who were rewarded for their dutifulness to their parents or parents-in-law, the *Kougiroku* reports an age of 4,627 civilians. As Table 2 shows, 71.4%

of the 4,627 rewarded civilians were aged between 21 and 50 as of being rewarded. Therefore, the shogunate's and lords' project to reward good behaviors of civilians was predominantly to encourage prime-aged adults to support their parents and parents-in-law.

However, in the early eighteenth century, filial support was not yet a legal mandate. Important laws were notified to every single household by *Murakatata Gonin Gumi Chou* (*Book of Five-household Unit of the Village*). The version of 1734 reconfirmed the ban on trading in humans and stipulated that if there was an abandoned child, it should be reported to the magistrate, and if the child was adopted, the adoptee should be instructed by the magistrate, but did not stipulate filial obligations from adult children to elderly parents. The law still stipulated responsibility from parents to children, and a safety net for abandoned children as legal mandates of the villages.<sup>21</sup>

## 4.2 Mandated filial support

Finally, in 1786, the shogunate stipulated dutifulness to parents as a legal mandate by amending *Gonin Gumi Oshioki Chou* (*Book for Governance of Five-household Unit*), the same as the aforementioned *Murakatata Gonin Gumi Chou* (*Book of Five-household Unit of the Village*), and every single household in the shogunate domain was notified of the following statement: “In general, prioritize the family business the most, and be filial to parents,... maintain intimate relationships between husband and wife and brothers,... [and] if there is an unfilial person, [he or she] should be reported.”<sup>22</sup> As the passage shows, this dutifulness meant that adult children who inherited a plot of farmland as their family business were obliged to support their retired parents. After four decades of encouraging filial support as a norm, such support was finally enacted as a legal mandate.

Table 2: Dutiful behaviors included in *Kankoku Kougiroku (Official Publication of Records of Dutifulness)* by age.

Age	1-10	11-20	21-30	31-40	41-50	51-60	61-70	71-80	81-90	91-100	101 or older	Total
Tōhoku	1	55	121	194	195	147	44	8	1			766
Kantō	2	33	101	163	141	99	38	5	2			584
Chūbu	2	39	155	239	208	117	35	3	2			800
Kimki	5	38	116	207	199	75	28	3				671
Chūgoku	5	44	86	142	161	94	32	4				568
Shikoku		17	60	126	140	71	21	1				436
Kyūshū	7	82	111	230	212	116	34	8	1		1	802
Subtotal	22	308	750	1,301	1,256	719	232	32	6		1	4,627
Share	0.5%	6.7%	16.2%	28.1%	27.1%	15.5%	5.0%	0.7%	0.1%		0.0%	100%
Unknown												896
Total												5,523

Source: Yamashita (1969), 320.

Otake (1982) showed that 41% of owner farming households inherited family properties because of retirements before their death from cases in western Japan (*Kinki*) (Otake, 1982, 222–233). Otou (1996) also demonstrated that 42% of heads of owner farming households inherited family properties due to retirements before their death from cases in the eighteenth to nineteenth centuries in northeastern (Tōhoku) Japan (Otou, 1996, 244–268). Fauve-Chamoux (2005) also presented that live transfer was more likely than transfer after death in farming households in the seventeenth to the nineteenth century from cases in northeastern Japan. The practice indicates that elderly parents were confident in their consanguineous or adopted sons’ performance of filial obligations.

After the enactment, the shogunate made efforts to make filial support prevail as a dominant norm. As described above, the *Kankoku Kougiroku (Official Publication of the Records of Dutifulness)* that included more than 5,523 civilians who were rewarded for filial piety was edited by the Shogunate Academy and was published in 1801. By making cases of filial piety well-known, the shogunate also attempted to bolster filial piety as a norm, along with mandating the heir to perform filial support.

### **4.3 Enforcement through possible revocation of status as household head**

Now, we turn to the question of how filial duty was enforced. The structure of property rights protection in early modern times was crucial in this respect. In early modern Japan, the genuine property owner of real estate was considered the family. Property rights were protected by the name of the household head along with a specification of the plot of land the family owned being written in the *Nayose Chou (Register of Land Owners)*, which satisfied requirements for perfection. However, this did not mean the household head owned the property as an individual; his name was put on the *Register*

as the representative of the household. Then, supporting dependent family members became a legal mandate of the household head. If the household head failed to meet this mandate, dependent family members could for a family conference composed of relatives report the household head's failure. If the attendees of the conference agreed on this failure, they could force the current household head to retire and nominate someone else, either a consanguineous or adopted child, including one adopted as an adult (Mandai, 2021).

Adult adoption was quite common in early modern Japan to support the running of a farm as a family business. The continuity of the household and farming as the family business was prioritized over consanguineous relationships, which differed from the European stem family system (Fauve-Chamoux, 2005, Kumon, 2021).

The entire process of household head status revocation was legitimate, so the mayor would replace the name of the owner in the *Register* with that of the newly appointed household head. Legislation stipulating such filial obligations in 1786 meant that retired parents were also allowed to file a complaint at family conferences to dismiss their heir as the household head if he failed to perform his filial duty. Thus, filial obligations were enforced by making the heir's property rights protection conditional on fulfilling these obligations.

Now, let us summarize the development of filial obligations in Japan in early modern times. In the early eighteenth century, when the age of large-scale reclamation ended, impartible inheritance became dominant, and retired parents who bequeathed household headship to their heir became dependent family members of the heir who succeeded them. In the early to mid-eighteenth century, the shogunate encouraged filial support from adult children to their parents or parents-in-law and then in the late eighteenth century, stipulated filial support as a legal mandate of the household head succeeding as leader of the family business. The mandate of filial support was enforced through

the protection of family property rights, under which the household head who failed to perform the duty of support for dependent family members was forced to retire and transfer the household headship to someone else.

Nakazato (2006) showed that the rate of co-residing of adults aged more than fifties with their children or adopted children had been 70 to 80 percent in the 1770s and it climbed up to 90 percent from the 1780s to the 1790s in the Saijo Village, State of Mino, in the shogunate domain. Although Nakazato (2006) did not specify the reason of the hike, we interpret the rise at least partly an outcome of the enactment of filial obligations in the 1780s. In a sense, the shogunate's enactment of filial obligation did not have a drastic impact. Filial support from the heirs to their retired parents had been performed by a majority as a norm well before its enactment (Sugano, 2004). However, its enactment seemed to force marginal households to perform filial obligations, as the results of Nakazato (2006) indicate.

The shogunate did not clarify the aim of regulations on inheritance in 1673, which made inheritance impartible if the bequeathed farmland plot's annual official estimated output was less than 10 *koku* (1,804 liters), and that in 1721, which made inheritance impartible if the bequeathed farmland plot's annual official estimated output was less than 20 *koku* (3,608 liters). Regarding the point, Nakazato (2009) presented intriguing results based on data from Shimomoriya Village in Nihonmatsu Domain in northeastern Japan. Nakazato (2009) demonstrated that by person-years during the period from 1716 to 1869, the percentage of co-residing of consanguineous or adopted adult children and elderly parents aged more than 55 was 39.7 percent among landless households, 68.6 percent among households whose farmland plots' annual actual outputs were more than 0 *koku* and less than 10 *koku*, 85.4 percent among households whose farmland plots' annual actual outputs were between 10 and 15 *koku*, and 86.7 percent among households whose farmland plots' actual outputs were more than 15 *koku*. When outputs are classified by



the official estimated outputs, the co-residing ratio is slightly lower for households whose annual official estimated outputs were between 10 and 15 *roku*, 83.2 percent (Nakazato, 2009, 353).

The households whose annual official estimated output was higher than 10 *roku* covered 64.3 percent of the total population of the village. That is, more than 60 percent of the total households were financially ready to perform filial obligations (Ochiai, 2006).

Therefore, annual actual 10 *roku* output was a threshold above which adult children able to perform filial obligations by income from the family property were dominant. The 1716 regulation on inheritance was consistent with the enacted filial obligations of 1782. Furthermore, given that the official estimated outputs might be lower than the actual outputs, the tightened regulation on inheritance was also consistent with the enactment of filial obligations.

Even if parents and children agreed on the latter's filial obligations, they might not for the level of support. If parents were concerned about it, they concluded a contract on the level of support from the heir to his retired parents when the family property was inherited. If the heir, who was either consanguineous or adopted son, failed to perform the contract, the retired parents filed a complaint at the mayor's office for enforcement (Takagi, 2006). Thus, filial support was not just a norm anymore. It was an enforceable legal mandate.

## 5 Modernization of filial obligations

The forced retirement of a household head who failed to perform his duties remained for some time after the Meiji Restoration of 1868 as the “revocation of status as the household head (*hai koshu*)” system. However, when the Civil Code of 1896,<sup>23</sup> modeled on French law, was implemented, it did not adopt this system (Kawaguchi, 2014, 418–419);

hence , the person whose name was registered with his family property was recognized as the owner of the family property as an individual, and even if he failed to perform the duty of support for dependent family members, dependent family members no longer had means to deprive him of property rights over the family property. Furthermore, by contrast to inheritance of property conditional on performing filial support under the shogunate law, they were separated in the Civil Code of 1896 (Harada, 2004). These changes could have reduced the incentives for the household head to perform his duty to support dependent family members.

Thus, the Civil Code of 1896 explicitly stipulated in Article 747 that the household head had a duty to support family members; in Article 954 (currently Article 877) that there was a mutual duty of support between lineal, or stem, family members and siblings; in Articles 955 that the order of responsibility for the duty of support was, first, the spouse, then lineal descendants, and finally, the lineal ascendants (Article 888 currently stipulates that the court shall decide the family member(s) who are responsible for the duty of support if the family members fail to reach an agreement); and in Articles 960 and 962 (currently in Article 879) that the court shall decide the degree of support.<sup>24</sup> Given the abolition of the household head status revocation system, the Civil Code explicitly stipulated the duty of support for dependent family members, including the duty of adult children toward their retired parents, and made this duty enforceable by the court. In particular, Articles 954 and 955 of the Civil Code of 1896 made it clear that adult children were responsible for filial support for their lineal ascendants.

## 6 Conclusion

In late seventeenth-century Japan, the shogunate and lords vested farming households with property rights over a plot of farmland that the household cultivated. Since this

period was still an age of large-scale reclamation across Japan, which meant a rapid increase in land input, partible inheritance was common among farming households. Additionally, as the population grew, the shogunate emphasized parents' responsibilities in raising children and prohibited child abandonment.

However, in the early eighteenth century, the age of large-scale reclamation ended. Accordingly, inheritance practice transformed from partible to impartible inheritance, which was bolstered by the shogunate's regulation. At the same time, the end of the land input increase implied the end of population growth. Since life expectancy had barely changed, Japan experienced its first period of population aging in the first half of the eighteenth century. To address the changes in population dynamics, the shogunate enacted legislation to encourage filial support by adult children for their retired parents. After the transitory period, in 1782, the shogunate stipulated that filial support of adult children who inherited family property and business was a legal mandate. Provided that property rights belonged to a household rather than an individual, if the current household head failed to perform his filial obligations toward his retired parents or parents-in-law, as dependent family members, a family conference consisting of relatives would force the current household head to resign and appoint his consanguineous or adopted son as the new household, and the mayor of the village would replace the name of property holder with that of the new household head in the *Nayose Chou* (Register of Land Owners), which satisfied requirements for perfection of ownership. Through the protection mechanism for the property rights of a household, filial support was enforced as a legal mandate for adult children who inherited family property.

The modernization of property rights protection after the Meiji Restoration of 1868 was a challenge to this scheme. Modeled on French Law, the Civil Code of 1896 stipulated that it was individuals, rather than the household, who owned properties. Since filial support had been enforced indirectly through the protection of family property

rights until the Meiji Restoration of 1868, the procedure for enforcing filial support needed to be explicitly defined. Thus, the Civil Code of 1896 explicitly stipulated a mutual obligation of support between lineal ascendants and descendants, such that adult children were obliged to support their retired parents and the obligations were enforceable by the court.

One policy implication of this study is that continental European countries and Japan are destined to run a large welfare state. Prior to the establishment of welfare states, filial support was a legal mandate for adult children in such countries, as it still is in some places today. Any shrinkage of the welfare state should be compensated for by an extension of the family support mandate. Although the “family welfare” based on the link between filial obligations and inheritance seems to have vanished in postwar Japan given the public welfare system (Izuhara, 2004), the family welfare would be back if Japan’s welfare state retreats. If nationwide risk sharing is more efficient, continental Europe and Japan will continue running large welfare states in the period of population aging.

Another implication applies to East Asian countries other than Japan. Many East Asian countries, particularly Taiwan, Korea, Singapore, and China, also have a tradition of filial piety (Sung, 1995, Yue and Ng, 1999, Lin and Yi, 2011, Qi, 2015), and similar to the case in early modern Japan, this filial piety seems to be backed by confidence in reciprocal financial support between generations (Hwang and Kim, 2016). Faced with rapid aging, East Asian countries have moved to enforce filial support as a legal mandate (Chen et al., 2007, Park, 2015, Chou, 2011, Serrano et al., 2017). The transformation from a norm to a legal mandate follows the same logic as that initiated by the Japanese shogunate in the late eighteenth century in the face of Japan’s first period of population aging. However, population aging in East Asia is now happening far faster than before due to longer life expectancies. As a result, the filial support provided by descendants is

already stretched thin (Hsu et al., 2018). In this regard, Taiwan, Korea, Singapore, and China are encouraged to extend their welfare states as continental Europe and Japan have done.

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## Statement of competing interest

The author does not have any conflict of interest regarding this research.

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## Notes

1 A translation by the Ministry of Justice: <https://www.japaneselawtranslation.go.jp/ja/laws/view/174/je> Accessed on October 22, 2023.

2 A translation by the Ministry of Justice: <https://www.japaneselawtranslation.go.jp/ja/laws/view/24> Accessed on October 22, 2023.

3 A translation by the Ministry of Justice: <https://www.japaneselawtranslation.go.jp/ja/laws/view/2058> Accessed on October 22, 2023.

4 A translation by the Ministry of Justice: <https://www.japaneselawtranslation.go.jp/ja/laws/view/2058> Accessed on October 22, 2023.

5 [https://www.legifrance.gouv.fr/codes/section\\_lc/LEGITEXT000006070721/LEGISCTA000006136127/?anchor=LEGIARTI000006422659#LEGIARTI000006422659](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070721/LEGISCTA000006136127/?anchor=LEGIARTI000006422659#LEGIARTI000006422659) Accessed on December 7, 2023.

6 A translation by the Ministry of Justice: <https://www.japaneselawtranslation.go.jp/ja/laws/view/24> Accessed on December 3, 2023.

7 “Oboe (Memorandum),” June 1673, Kondo (1984a), 298; Kondo (1798).

8 “Shokoku Goryosho hyakusho he oosetsuke rare sourou on kakitsuke (Order for farmers in all domains and the shogunate domain),” April 1713, Shihou Daijin Kanbou Shomuka (General Section, Secretariat of Minister of Justice) (1932b), 258 (Frame 134); Ishii (1959c), 170–171, 279<sup>4</sup>; “Jou jou (Articles),” April 1813, Takayanagi and Ishii (1934), 689, 131<sup>4</sup>.

9 “Denpata bunpai no koto (On the division of paddy fields and dry fields),” July 1721, Takayanagi and Ishii (1934), 695, 131<sup>7</sup>.

10 “Hyakusho shinki kasaku narabini shinki shobai choji sonohoka no gi onkakitsuke (Order on suspension of new farming household creation and new business and other issues),” Ishii (1959c), 178–179; Shihou Daijin Kanbou Shomuka (General Section, Secretariat of Minister of Justice) (1932b), 268 (Frame 139).

11 “Shokoku kyoson he oose idasare (Ordered to villages across domains),” February 26, 1649. Ishii (1959c), 163–164, 278<sup>9</sup>; Shihou Daijin Kanbou Shomuka (General Section, Secretariat of Minister of Justice) (1932b), 246 189[Frame 129/381].

12 “Fukou no ko torihakarai no koto (On how to treat undutiful children),” November 14, 1650. Ishii (1959c), 291; Shihou Daijin Kanbou Shomuka (General Section, Secretariat of Minister of Justice) (1932b), 444[Frame 227/381].

13 “Oboe (Memorandum),” October 1670. Ishii (1959b), 206–207, 062; Shihou Daijin Kanbou Shomuka (General Section, Secretariat of Minister of Justice) (1932a), 334–341 [Frame 180/270]. In early modern Japan, municipalities consisted of three

layers of organization. The largest layer was *kumiai mura* (associated villages) at the county level, led by the *Ōjouya* (senior mayor), who was a farmer, followed by the *mura* (village), led by the *nanushi/shouya* (mayor), who was a farmer, and then the *gonin gumi* (five-household unit) composed of five households within a village.

14 March 18, 1681, [Ishii \(1959a\)](#), 74–75, 181; February 8, 1697, [Ishii \(1959a\)](#), 75–76, 183

15 July 11, 1688, [Ishii \(1959a\)](#), 76, 184; December 11, 1689, [Ishii \(1959a\)](#), 76, 185; April 11, 1696, [Ishii \(1959a\)](#), 76–77, 186.

16 “Sadame (Law),” May 1682. [Kondo \(1984b\)](#), 17; [Kondo \(1787\)](#), 36–37.

17 “Sadame (Law),” May 1711. [Ishii \(1959b\)](#), 84, 013; [Takayanagi and Ishii \(1934\)](#), 57–58, 48; 143–144 [Frame 84/270–85/270].

18 For a son who was “filial to his parents”, June 1721, Mayor Kinzaburo, Village of Arita, State of Bingo, [Takayanagi and Ishii \(1934\)](#), 567–568, 1088; for a son-in-law who was “filial to his stepmother”, June 1721, Farmer Mataemon, Village of Arita, State of Bingo, [Takayanagi and Ishii \(1934\)](#), 568, 1088; for a daughter who fulfilled her “filial duty to her old mother”, April 1739, Tsushi, the daughter of servant Tsuma of Farmer Michijiro, Village of Murayama, County of Kambara, State of Echigo, [Takayanagi and Ishii \(1934\)](#), 573–574, 1098; for a daughter who was “filial to her old mother,” June 1739, Hime, the daughter of farmer Chuemon, Village of Otoguro, County of Koma, State of Kai, [Takayanagi and Ishii \(1934\)](#), 574, 1099; for a wife who was “filial to her mother-in-law,” May 1742, Wife of Sakudayu, carpenter, Town of Izumozaki Amaze, County of Mishima, State of Echigo, [Takayanagi and Ishii \(1934\)](#), 577, 1106.

19 “Okanjou Bugyou e (To the Treasury Secretary),” March 1789, [Takayanagi and Ishii \(1941\)](#), 311, 5124. “Jisha Bugyou e (To the Governor of Temples and Shrines),” March 1789, [Takayanagi and Ishii \(1941\)](#), 311, 5125. “Machi Bugyou e (To the Governor of the City of Edo),” March 1789, [Takayanagi and Ishii \(1941\)](#), 311, 5126. “Owari-

dono Oshirozuki e (To Officials of the Castle of Lord Owari),” Takayanagi and Ishii (1941), 311–312, 5127. “Kiidono Oshirozuki e (To Officials of the Castle of Lord Kii),” Takayanagi and Ishii (1941), 312, 5128. The Treasury Secretary (*Kanjou Bugyou*) was in charge of notification to other domains than Lord Tokugawa of the Owari domain and Lord Tokugawa of Kii domain.

20 November 1801, Takayanagi and Ishii (1941), 811, 6423. A copy of the original edition is also available at the Digital Archives of the National Archives of Japan as CC0: <https://www.digital.archives.go.jp/file/3694453>

21 *Touji Murakata Goningumi Chou (The Current Version of Book for Governance of Five-household Unit of the Village)*, Takayanagi and Ishii (1934), 1353, 714–724.

22 *Gonin Gumi Oshioki Cho (Book for Governance of Five-household Unit)*, March 1786. Arai (1969), 329. Another version of *Gonin Gumi Oshioki Cho (Book for Governance of Five-household Unit)* stipulated that “prioritize the family business the most,... if there is an unfilial person, [he or she] shall not be hidden” (Oishi, 1969, 98).

23 While Parts I to III of the Civil Code were promulgated in 1896, Parts IV and V of the Civil Code, which included family law, were separately promulgated in 1898 as part of the Civil Code of 1896. Following the government, here, we reference the entire civil code from part I to V as the Civil Code of 1896.

24 *Minpou Dai Shi Hen Dai Go Hen (The Civil Code, Part IV and Part V)*, Law Number 9, 1898. National Archives of Japan Digital Archive <https://www.digital.archives.go.jp/file/155157>

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