

〔研究ノート〕

Politics of Cancer

-- the Law Making Process of Fundamental Law of Cancer, in Comparison of Brain Death, Ban on Human Cloning Laws and Law on Gender Identity Disorders --

TAMURA, Mitsuyo

Preface

This paper focus on the law making process of Fundamental Law of Cancer approved in Japanese Diet in 1996. This is a part of studies of law making process of bioethical/ethical issues; such as brain death and human organ transplant, ban on human cloning, abortion, DNA research, end of life care, stem cells and so on.

The cancer law was approved very swiftly compared to other ethical/medical issues. Usual paths of the ethics related bills are long and intense. We have to find out why this law was approved quickly, and have to investigate what happened throughout the process.

By observing this law making process, we will be able to predict what will happen to the future bioethical issues such as euthanasia (to terminate human life on the purpose of avoiding pain in terminal care), ‘designer babies’ (pre birth DNA reform). Historically, the Diet was not the place to discuss on ethical matters. They were considered as personal matters and the Diet members and researchers are not experts on ethical debate. And yet we are facing many ethical issues in the field of political debate.

1. Law Making Process in Japan

Japanese law making process is very complicated and the law making process are quite different from each issues. Some issues are solved quickly, some are not. Before introducing issues of bioethics, I would like to express the standard procedure of law making in Japan.

There are two types of bills; bills put by cabinet (two thirds) and put by the Diet members (one thirds). Almost all the bills are put on agenda of committees of the House of Representatives (lower house) and the House of Councilors (upper house). Those committees are held according to the nature of the bill; such as budget, welfare and labor, diplomatic matters and self defense. Bills go through lower house committee first and discussed and put to the vote. If approved, next stage will be a plenary session of the House of Representatives. The same process is required at the House of Councilors. After being approved in a plenary session of the House of Councilors, the bill will be enforced.

We have two sessions (about 100 days each) a year. Most of the bills are approved swiftly, but two or three out of hundred are debated very long hours in the committees. If the government party and the opposing parties had different opinions, the time spent on debating on the bill will be very long. The usual process requires about 30 hours each houses per a bill.

Unlike in the U.S., Japanese Diet closes the session about two times a year, the orders of discussion of the bills are extremely important. You have to put the most important bills on the agenda, otherwise they can be abandoned. When the Diet is dissolved by prime minister, and the election starts, all the bills will be abandoned automatically.

2. Usual Law Making Process of Bioethical Problems

Usually, ethical issues, especially medical issues, bioethical issues are discussed in the Diet over a long period of time. They are also regarded as second class issues. A good example is the law making process of brain death and human organ transplant.

The brain death problem took 14 years until the law was approved. The first discussion took place in the Ministry of Welfare as ‘research group on brain death’ in 1989. Followed by ‘special research committee on brain death’ in the Diet which was organized according to the Diet law.

The first bill was put by LDP (Liberal Democratic Party) members in 1994. In 1996, government parties and opposing parties put the bill on agenda in cooperation. The bill was discussed and amended, but abandoned because of the dissolve of the House of Representatives.

They had to start from the beginning, but the bill was put 1996 again, and finally the intense debate started in 1997. Two bills, one from LDP members, and the other from the opposing parties, were voted together. The style (of voting two bills on the same issue) was quite extraordinary in Japanese Diet.

The bill which supported by LDP members was approved (by 82% of LDP members). The bill formally stated the brain death as legal death, but limit the judgment process by medical doctor only by written consent of the patient. Family members don’t have the right to approve brain death judgment procedure.

The other long-term discussion example is the ban on human cloning. It was an urgent issue, but it took three years from the first bill to the second approved bill.

In 1997, a scientist created clone sheep ‘Dolly’. The ethical issue was debated all over the world. Japanese prime minister ordered advisory committee on science technology. A final report was addressed in 1999. Then the first bill banning human cloning was put in 1999. (Abandoned later)

The bill was put on agenda in 2000 for the second time, and it was amended incrementally. Two bills (from government parties and opposing parties) was

discussed, but they became the one bill in cooperation. It was approved at the end of 2000.

These two examples show usual bioethical problems always take back seat to the more important issues for the Diet members such as consumer tax or health care reform. They also have difficult times when the government parties and opposing parties have two different ideas. In the case of brain death bill, the two bills were not put into one bill until the end of the process.

It was clear that ethical issues in the Diet can not avoid the fierce debate and always suffer from the long term discussions.

3. Law Making Process of Fundamental Law of Cancer

The fundamental law of cancer was approved by the Diet in 2006. Sessions of the committees were much shorter compared to the brain death issue and ban on human cloning addressed above. The bill was put on agenda only one time, and approved in about two months. The law making process itself was short as well.

We have to find out why this law was approved so swiftly in order to predict what will happen to future bioethical problems.

The Fundamental law of cancer bill was put by Minsyuto (Democratic party of Japan) on April 4th. On May 23rd, LDP and Koumei-to submit the bill under the same name. The bill was discussed at the Welfare and Labor committee of the House of Representatives for the first time.

The bill turned into a special issue by a speech by a member of the House of Council at the plenary session in May 22nd. Senator Takashi Yamamoto addressed himself as a cancer patient, and argued the cancer law had to be approved as fast as possible.

Discussion over two bills started in the committee of House of Representatives on June 2nd. On June 9th, two bills became one bill through the discussion in the committee, and the bill was put on agenda of the plenary session of the House of Representatives on June 13th.

Approved by the House of Representatives, the welfare and Labor committee of House of Councilors had a discussion on the bill only to end in 24 minutes. The bill was formally approved by the House of Councilors on June 16th. The hours spent on this bill in both committees were 22 hours 41 minutes. Comparing to the other bioethical issues, sessions ended very fast.

Now I would like to introduce what the Fundamental law of cancer is about. It encourages the research in oncology. The gap of quality of treatment on cancer should be smaller by this law. Tokyo is more accessible compared to the rural area in Japan. It also encourages the development of palliative care, control over the QOL (quality of life) of the cancer patients. It demands swift approval by Ministry of Welfare and Labor on newly developed drugs, and instruments. Anticancer drugs are

asked to be covered by health insurance. The law also states the rights of cancer patients, such as informed consent and opportunities to have the second opinion.

4. Law making process of Gender Identity Disorder law

Japan experienced another swift law making process in 2003. The law is officially called ‘Law concerning special rules regarding sex status of a person with gender identity disorder (GID)’. It is about changing the sex status of a person who wants to be recognized lawfully as the opposite sex.

The law was put into agenda on 1st July 2003. It was discussed at the upper House first then at the lower House. The committee on law of the House of Councilors had discussed with the matter for only 19 minutes. Then the law was approved next day at the plenary session of the House of Councilors. Finally, it was approved at the House of Representatives on 10th July. It took only 10 days to be approved. The process was extremely short comparing with the 14 years of brain death matters.

The law was put by the LDP members and considered as an important matter by the LDP leaders who are known as conservatives. It is a big mystery why the law was admitted so quickly. Changing the Family Registry law in Japan is a very big issue especially about women keeping the maiden name. Till today, I don’t have any key to explain the political process of this matter.

Conclusion

There are three reasons of the swift discussion and approval of the cancer law. One is the presence of the Diet member who was actually suffering from cancer. The senator Yamamoto pursued the rights of cancer patients until he passed away on December 22nd 2007. The second reason was the timing. The Diet session was about to close when the bill was intensely argued. Last reason is the generality of the issue itself. One out of three people die of cancer in Japan. Cancer is the top cause of death. Heart problems and cerebral hemorrhage come second. Treatment of cancer is a common concern.

Consequently, Fundamental law of cancer was very unique issue in the Diet. Special factors caused the bill being passed so quickly. We couldn’t see the change of the point of view regarding bioethics in the Diet.

But then, we can not oversee the fact that Law concerning special rules regarding sex status of a person with gender identity disorder (GID) had approved in the Diet very fast in 2003 as the cancer law. Now, persons with GID can alter sex status by application of the Civil Code in Japan.

This leads us to the conclusion that the Diet members now have a different view regarding bioethics comparing to the ‘brain death’ debate era in 1990’s. They may start to regard bioethical issues as important social issues.

Japanese are facing the dramatic change of domestic politics. We can hardly notice

the giant change of the view of bioethics. The world is facing difficult bioethical issues such as euthanasia and designer babies. We should pay more attention to the rules of decision making in this area. Japanese government doesn't have a bioethics advisory committee which covers any bioethical problems. It is time to think about bioethics politics in a serious way.

Reference:

1. Hitoshi Kobayashi, Meaning of the Fundamental law of cancer and way of cancer treatment, in Rippou to chosa, the office of House of Councilors, No. 265, 2007
2. Tomotada Kajiyama, Fundamental law of cancer, in Hourei kaisetsu souran, Daiichi houki, No. 296, 2006
3. Hitoshi Kobayashi, Meaning of the Fundamental law of cancer and problems of cancer treatment, in Nihon geka gakkai zasshi, No. 109, 1, 2008
4. Mitsuyo Tamura, Law making process of the brain death and human organ transplant law, in Hougaku seijigaku ronkyu, No. 35, 1997
5. Chieko Nouno, Commentaries on law concerning special rules regarding sex status of a person with gender disorder, Nihon kajo syuppan, 2004