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From "Individual in Family" to "Individual's Family": The System of "Designated Guardianship" and Its Ethical Implications

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Abstract. With the acceleration of China's population aging and shifts in family structures, the traditional guardianship system based on family blood ties increasingly reveals its limitations in addressing diverse elderly care needs. The system of designated guardianship, gradually established since the enactment of the Law on the Protection of the Rights and Interests of the Elderly, represents a significant innovation in guardianship arrangements. It fully respects the personal wishes of the ward, reflecting new legislative trends and shifts in social ethics, and propels China's adult guardianship system from family representation toward individual self-determination. This paper traces the legislative evolution of the designated guardianship system in China, examines the development of guardianship for "incapacitated persons" from the late Qing Dynasty to the Republican era, and integrates John Eekelaar's analysis of the core principles of modern family law. By exploring the continuity and transformation within the guardianship system, it aims to elucidate the underlying ethical progress and legal innovation reflected in these changes.

Keywords: Family Ethics, Legal Rights, Designated Guardianship, (Legally) Incapacitated Person

1. Introduction

Right now, China is quickly becoming a society with many old people and fewer children. The topic of "how to take care of old people" is being talked about widely and often. In these discussions, "guardianship" is a very important point. For example, from 2012 to 2021, the number of cases where old people's rights were violated because they could no longer make decisions for themselves or had no guardian has gone up each year. Also, the number of old people who actually have no guardian or are in other difficult guardianship situations is increasing [1].

These facts show that China's current legal guardianship system does not cover all the different needs people have. The old way of choosing guardians based on a fixed family order is hard to apply to complicated real-life situations. To solve this, the General Provisions of the Civil Law issued in 2017 took the "voluntary adult guardianship" system that was first added to the Law on the Protection of the Rights and Interests of the Elderly and made it better. It improved how the agreements are made and who can use this system. This change was kept and developed further in

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the Civil Code. This system is based on two main ideas: "respecting what the person under guardianship really wants" and "doing what is best for the person under guardianship." It allows adults to choose their own guardian. This helps fill the gaps left when family guardianship or public guardianship is not enough. It is not only an important way to deal with the current population structure and aging situation but also shows the change in how guardianship should work, which modern society is calling for.

2. The voluntary adult guardianship system and its development

The General Provisions of the Civil Law, which was issued and took effect in 2017, improved the old guardianship system. It clearly stated that adults have the right to choose their own guardian through mutual agreement. It also established the principles of "respecting the true wishes of the person under guardianship" and "acting in the best interests of the person under guardianship." These rules and their core ideas were kept and further improved in the Civil Code. The Civil Code added rules about removing a guardian's qualification, rules for providing "temporary" care, and a social and state guardianship system as a final safety net. The release of this new law is undoubtedly a new consideration in response to new social problems, but it is also a continuation of ideas from the past.

The voluntary adult guardianship system was added relatively recently to China's legal system. In China's early legal system, there was no special guardianship system for the elderly. Notary services also did not cover setting up guardians for elderly people who were mentally sound. The adult guardianship system only included legal guardianship, and it only applied to adults with incomplete capacity for civil conduct due to mental illness. For example, Article 14 of the General Principles of the Civil Law only defined the people under guardianship as those with no capacity for civil conduct, and their guardian had to be their legal representative. Article 17, regarding adult guardianship, only set an order for appointing guardians for adults with no or limited capacity for civil conduct (referred to as "mentally ill persons" at the time). This system design had problems: it was passive, prioritized formal transactions over the person's needs, and did not consider the person's own wishes first. It did not fully respect the judgment and self-determination abilities the person might still have.

Therefore, as society developed and the aging problem became more obvious, the need for elderly people to sign contracts with institutions like nursing homes and psychiatric hospitals concerning living arrangements, care, and treatment significantly increased. The old guardianship system aimed at the mentally ill showed many shortcomings and became increasingly inadequate in protecting the elderly. The practice of China's legal guardianship showed that for many elderly people needing guardianship, their first-in-line guardian (usually their spouse) often was no longer capable of providing care. The traditional model relying on families to take on guardianship duties gradually became disconnected from social reality [2]. This old system concept clearly hindered the modernization of China's adult guardianship system. At the same time, in the international field of adult guardianship, a trend gradually formed with human rights protection at its core: voluntary guardianship should come first, with legal guardianship as a backup. In this context, to meet domestic guardianship needs and advance China's rule of law, academics proposed improving the existing guardianship system: "China's existing guardianship system has many defects and is not enough to protect the legitimate rights and interests of the elderly. There is an urgent need to improve the guardianship system for the elderly." [3]

As mentioned before, when designing China's voluntary guardianship system, the practical needs of the elderly were considered first. A clear example is the first paragraph of Article 26 in the Law of

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the People's Republic of China on the Protection of the Rights and Interests of the Elderly, added in 2012 and effective in 2013. It stated: "Elderly persons with full capacity for civil conduct may negotiate to determine their guardian from among their close relatives or other individuals or organizations who have a close relationship with them and are willing to undertake guardianship responsibilities. The guardian shall, in accordance with the law, assume guardianship responsibilities when the elderly person loses or partially loses capacity for civil conduct." However, it can be seen that this rule at the time still had clear limitations. It only limited the application of the voluntary guardianship system to the elderly and did not extend it to all natural persons in civil law. By the time of the General Provisions of the Civil Law and the Civil Code, the "voluntary adult guardianship" system was proposed and further improved. This is shown by both the expansion of its application to all adult natural persons and the introduction of related supporting systems. This series of legislation shows that in terms of the guardianship system, China has been committed to meeting the autonomy needs of groups like the elderly and protecting their right to self-determination and dignity. With policy advancement, it plays a role in preventing family disputes, promoting the protection of rights and interests, and reducing the social burden. At the same time, the respect for the right of free choice in the voluntary guardianship policy is also an important reflection of modern social civilization. The promotion and implementation of this system help better respond to population structure changes and improve the civilization level of the whole society.

3. The modern historical basis of the guardianship system

The guardianship system, represented by voluntary adult guardianship, is not entirely new to China's legal system without any historical basis. As early as the late Qing Dynasty and the Republic of China period when the modern legal system began to be built, adult guardianship was an important part of it.

3.1. The development of guardianship for "interdicted persons" in modern times

In the late Qing Dynasty, China began its attempt at legal modernization. Starting with the Draft Civil Code of the Great Qing, a new guardianship system was being planned. Among it, the guardianship concerning "interdicted persons" (meaning adults unable to manage their own affairs and property due to mental incapacity) has a relatively close connection with the voluntary guardianship system in modern society.

The Draft Civil Code of the Great Qing established a relatively systematic guardianship system for interdicted persons, aiming to provide legal protection for adults "constantly in a state of mental derangement" (i.e., interdicted persons). According to Article 1432 of the draft, "When an adult is declared interdicted, a guardian must be appointed" [4], clearly including interdicted persons within the scope of guardianship subjects. The selection of guardians followed a legal order. According to Article 1433, the order was: spouse, grandfather, grandmother, head of the household. If none of the above were available, the relatives' assembly would select a suitable person (Article 1434). This guardianship order reflected the importance placed on family relationships at the time, and the different positions of grandfather and grandmother reflected the traditional feudal custom of male superiority and female inferiority in ancient Chinese society. It is worth noting that when the guardian was the spouse or grandparents, no guardian supervisor needed to be appointed (Article 1435), reflecting the legislators' trust in close kinship, and their emphasis and respect for marital and direct blood relationships. Not setting up an additional supervision mechanism, on one hand, aimed

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to avoid excessive interference in family relations, but on the other hand, also reflected the problem of a lack of supervision mechanisms [5].

Besides managing property, the guardian's duties also included "within the scope necessary for the purpose of guardianship, to nurture and provide medical treatment for the ward's body according to the ward's financial capacity" (Article 1436), indicating they had the obligation of physical and mental care. This showed practical consideration.

The establishment of the interdicted persons guardianship system in the Qing Dynasty was influenced by Western legal systems, differing from traditional Chinese law. Under patriarchal concepts, the head of the household held absolute leadership and control over the entire family. This social control model aimed to absorb guardianship functions within the family. By the late Qing legal reform, the Draft Civil Code of the Great Qing, referencing the civil legislation systems of countries like Germany and Japan, adopted a narrow guardianship model, namely only providing legal guardianship for adults "constantly in a state of mental derangement" (interdicted persons). It separately stipulated civil legal systems like parental power, guardianship, and curatorship. Although this guardianship system structurally drew from the legislation of multiple countries, it still reflected respect for and continuation of traditional Chinese family ethics.

After the establishment of the Republic of China, the modernization of the civil law system was further promoted, continuing the basic direction of the Draft Civil Code. Successively, the Draft Civil Code of the Republic of China and the Civil Code of the Republic of China were formulated. These two laws, based on the Draft Civil Code, optimized and adjusted the adult guardianship system in various aspects. In improving the guardianship regulatory system, the draft uniformly used "court" to replace previously mixed terms like "judicial office" or "judicial court," reflecting the professionalization trend of judicial institution reform. In substantive content, the Draft Civil Code of the Republic of China deleted clauses restricting wives' capacity for conduct in the General Principles, reflecting the influence of the women's rights movement and equality concepts [6]. Simultaneously, it revised the definition of interdicted persons, defining them as "those who, due to madness or other mental disorder illnesses, are unable to manage their own affairs" [4], shifting to behavioral consequences as the judgment criterion, which was more reasonable. Furthermore, the draft enhanced protection for persons with limited capacity for conduct, clearly stipulating that "the declaration of intent of a person with limited capacity, except for purely obtaining legal benefits, should obtain the consent of the legal representative or curator." It also expanded the order of guardians, adding "the person appointed by the later deceased father or mother by will" as the fifth in line. The supervision mechanism was also strengthened, requiring guardians to obtain consent from the relatives' assembly when committing the ward to a public hospital or private house for confinement. These reforms clearly showed a trend promoting the independence of guardianship from the traditional family. However, due to the strengthening of the household system part and the expansion of parental authority, the Draft Civil Code of the Republic of China actually narrowed the application scope of the adult guardianship system, reflecting how traditional patriarchal familism hindered the system during legal modernization.

By the time the Civil Code of the Republic of China was promulgated, the adult guardianship system underwent further changes. This law completely removed restrictions on wives' capacity for conduct, comprehensively strengthened the protection of women's rights and interests, and reflected ideas of gender equality in the arrangement of guardianship order, such as placing parents and grandparents in the same order. The household system part was significantly reduced. The definition of "family" was adjusted to "a relative group living together for the purpose of permanent common life." The head of the household no longer naturally enjoyed property control rights, and family

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members could request to divide the family, thereby significantly resolving the inherent contradiction between the household system and the adult guardianship system. However, the Civil Code of the Republic of China also simplified the design of the guardianship system: it abolished the category of quasi-interdicted persons, limited guardianship subjects to "those who, due to mental derangement or mental weakness, are unable to manage their own affairs," deleted special provisions for guardian supervisors, weakened the functions of the relatives' assembly, thereby hollowing out the legal status of the adult guardianship system. This adjustment reflected the legislators' rethinking of the system's practical operational effectiveness and also indicated further compromise between tradition and modernity.

In summary, from the Qing Dynasty to the Republic of China, the adult guardianship system experienced both inheritance and transformation.

In terms of inheritance, the guardianship order system established by the Qing Dynasty's Draft Civil Code of the Great Qing, which was centered on the family and based on kinship, continued into the Republican period. Both the Draft Civil Code of the Republic of China and the subsequent Civil Code of the Republic of China retained the order arrangement that prioritized close relatives such as spouses and grandparents as guardians, reflecting the ongoing emphasis on traditional family ethics and kinship responsibilities. Furthermore, both periods stressed the dual responsibilities of the guardian: caring for the ward's physical and mental well-being and managing their property. Particular attention was paid to providing corresponding support and medical treatment based on the ward's financial situation. This practical orientation continued to be inherited in Republican legislation. In terms of institutional function, adult guardianship consistently served the basic protective needs of those unable to manage their own affairs, and its fundamental purpose did not change with the shift in eras.

In terms of change, the Republican-era adult guardianship system saw significant advancements in judicial specialization, gender equality, and institutional structure. The Draft Civil Code of the Republic of China achieved a professional transformation of judicial functions. The Draft Civil Code of the Great Qing still emphasized paternal priority in the guardian order, reflecting the maintenance of traditional patriarchal society. In contrast, the Draft Civil Code of the Republic of China removed restrictions on wives' capacity for conduct and revised the definition of interdiction to be based on behavioral consequences, reflecting progress in egalitarian concepts and rational legislation. By the time of the Civil Code of the Republic of China, the principle of gender equality was further strengthened. For example, changes were made to the statutory guardian order: from prioritizing grandfathers over grandmothers, to merging their treatment, and finally to placing parents and grandparents in the same order, completely abolishing the rule of spousal priority. The household system part was also significantly reduced, weakening the constraints of parental authority on the guardianship system, making individual protection superior to family control. Of course, as previously noted, Republican legislation also showed a tendency toward simplification in some aspects: abolishing the category of quasi-interdicted persons, deleting special provisions for guardian supervisors, and weakening the functions of the relatives' assembly. Thus, while strengthening equality and modernity, it somewhat hollowed out the substantive operational mechanisms of the guardianship system.

Qing law restricted "separate registration and different property," requiring parental permission for dividing the family, presenting a strong family-centric constraint with strong internal family cohesion. After the Republican Civil Code abolished these restrictions, documents for dividing families surged (documents for dividing families in the Republican period accounted for 73% of the total, and 81% of those contained support clauses) [7]. With this change, family units became

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smaller and more divided, their binding force weakened, and the traditional "household system" was somewhat shaken. As Shi Shangkuan pointed out in Treatise on Family Law, "Although the current civil law still provides for a household system, it is conceived with the nuclear family of husband, wife, and children at its core. The relationship between the head of the household and family members is already far from what it used to be" [8]. Precisely because of this, the inherent contradiction between the household system and the adult guardianship system was resolved.

This process of change reflects both the influence of Western legal thought and the evolution of social concepts, as well as the legislators' compromise and adjustment between traditional family ethics and modern individualism. In the late Qing, social structure gradually showed a trend of transitioning from family-centric to individual-centric, and the Republic continued this trend, further transitioning from duty-centric to rights-centric [9]. The overall support and guardianship in the Republican period presented such a fundamental shift: the responsibility for elderly care moved from the family to society; moral obligations transformed into institutional state obligations [10].

Taking the social situation in the Qingshui River Basin during the Republican period as an example, after the promulgation of the Civil Code of the Republic of China, as dividing the family was no longer incorporated into the national legal system, more and more local families chose to divide their households to clarify property ownership among different family units. Simultaneously, a new method of elderly support emerged: including clauses related to the care of the elderly in the family division contracts to safeguard their support in old age. The promulgation and implementation of the Civil Code of the Republic of China weakened the traditional head of household's absolute control over family property. The act of dividing the family was no longer strictly restricted by state law and instead relied more on folk customs. This change objectively reduced the family's monopoly control over resources for elderly care, allowing arrangements for the elderly to some extent to break free from purely moral constraints and enter a more contractual and normative institutional framework. At the same time, military service policies implemented by the Nationalist government, such as the conscription system of "one out of three sons, two out of five sons," forced families to avoid conscription through methods like dividing the family. This state action indirectly intervened in family structure and the distribution of resources for elderly care, further pushing the responsibility for elderly care beyond the family sphere, taking on hues of state coercion and public policy influence. It can be seen that although the family and clan remained the core bearers of support responsibilities, the intervention of state power and the legal system had initially prompted the responsibility for elderly care to gradually transition from the family to the societal level, and moral obligations began to shift toward institutional state obligations [7]. This fundamental transformation was mainly reflected in the adjustment of national legislation and the implementation of social policies. Although the state had not yet established a systematic social elderly care security system at this time, the intervention of laws and policies had begun to steer the issue of elderly care from the purely familial ethical domain toward the realm of social governance with greater publicness and institutional arrangement. This marked the initial budding of the transformation of elderly care responsibility from a traditional familial moral obligation to a modern institutional obligation shared by the state and society.

3.2. Ethical interpretation of changes in family relationships

The emergence of the guardianship system for interdicted persons signified a loosening of the traditional guardianship model, which was centered within the clan and based solely on bloodline as the measure. Although, due to the powerful inertia of history, intra-family guardianship remained the most important and primary form of adult guardianship at that time, the establishment of a modern

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legal system meant that state power had already begun to intervene in specific family matters. It promoted a gradual shift in the main purpose and focus of the guardianship system toward the protection of individual legal rights. This change was also highlighted years later in the legal system of New China: as aging intensified, fertility rates further declined, the number of "childless elderly" increased, family structures became more unstable, and family relationships tended toward atomization, further solutions were needed.

John Eekelaar (1978), in Family Law and Social Policy, proposed three functions of family law: 1) to protect individuals from harm within the family; 2) to provide a machinery for adjusting affairs between individuals when the family unit ends; and 3) to direct social support to families which are in being [11] — protecting individuals, mediating relationships, and providing social support. This theory reveals the core of modern family law systems: different from the traditional status-based institutional construction centered within the clan, especially on patriarchy, the core of modern legal rights lies in abstracting general, equal human rights from specific contexts and protecting them.

Good family law should be able to respond to the complex changes in human social life and always aim to promote human well-being as its ultimate goal. Family law, deeply embedded in social policy, aims to respond to the needs and changes of the family as a basic social unit. Family law both shapes social relations and is shaped by their evolution. Law reflects societal expectations and values regarding the family, while changes in individual behavior patterns and social lifestyles also deeply influence the progress of family law itself. Eekelaar suggests that contemporary law needs to move beyond the traditional concept of "family law" and evolve toward a broader "Law of Status" [12]. This means the law needs to recognize and respond to the increasingly diverse intimate relationships and family forms in modern society and adjust the rights and obligations of parties based on the facts of these relationships rather than a single legal form.

Reflected in guardianship and elderly care, this change manifests as a gradual shift from the traditional "family-based elderly care" model tied by bloodline to elderly care forms based on the voluntary adult guardianship system, which respects the wishes of the parties. Its core value lies in reconstructing the boundaries of family relationships through contract, expanding the concept of "family" from a biological category to a sociological community [13]. This reconstruction challenges the traditional "blind worship" of bloodline in family philosophy. Voluntary adult guardianship essentially aims at "repairing or reconstructing family functions" [14]. It mediates intergenerational conflicts by introducing external forces (such as social organizations) or provides alternative support for disintegrated family relationships.

This support can serve a protective role, preventing oppression and harm within the family, and safeguarding the basic rights and well-being of adult individuals, especially vulnerable members like the elderly. It can better address potential situations in traditional legal guardianship where guardians may fail to provide proper care or act against the ward's own wishes. It shifts from "remedy after the fact" to "prevention beforehand," significantly moving protection forward. It allows individuals to autonomously choose the person they trust most and who best understands their wishes as their guardian while they are still mentally capable. This greatly reduces the future risk of improper guardianship, abuse, or neglect. This is an active and efficient self-protection mechanism that better achieves the optimal effectiveness of the protective function by preventing problems before they arise, protecting individual rights from infringement.

Respecting individual autonomy is the greatest source of legitimacy in the construction of family law. The ultimate purpose of protection is not to deprive people of their autonomy but to realize their best interests. The voluntary adult guardianship system transcends the traditional frameworks of bloodline and marriage. It is a modern choice based on individual affection and trust, reflecting the

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highest respect for the basic human right of personal self-determination and also demonstrating the important role of mediating between personal will and family function.

The subjects protected by voluntary adult guardianship are no longer limited to members of traditional family structures but extend to all adults, acknowledging the diversity of social relationships. Its protective philosophy also shifts from the traditional intra-family "paternalistic substitute decision-making" to "supported autonomous decision-making," allowing the law to move from making decisions on behalf of individuals to providing legal safeguards for the outcomes of autonomous choices. This modern shift toward supportive legal rights represents a transition of law from ius cogens (mandatory law) to ius dispositivum (dispositive law). That is, the law increasingly plays the role of a "default option" and "guarantor of enforcement," allowing citizens to achieve self-governance through agreements. This is the deepening and expansion of the principle of private law autonomy into the realm of personal relationships and is an advanced manifestation of the modernization of legal systems.

Supporting "De Facto Families" in Performing Their Practical Functions: In modern society, "de facto families" composed of close friends and others have gradually evolved. They are functionally equivalent to traditional families in social terms but are excluded from the statutory guardianship system. Voluntary adult guardianship effectively supports these social units in normally fulfilling their care functions. By recognizing their agreements, the law provides stability and oversight for various relationships where people perform mutual aid functions. This is the most direct and practical effect of its supportive function.

It is an undeniable fact that law often lags behind social development. The rationality of voluntary adult guardianship lies in its acknowledgment and respect for the already widespread and diverse lifestyles and intimate relationships. It no longer forces people to adapt to a single legal framework but allows the law to adapt to the ever-changing social reality. This "people-oriented" legislative approach actively responds to modern challenges such as population aging, the diversification of family structures, and the rise of individualism. It constructs a family policy system that is more flexible, inclusive, and respectful of individual choices. While respecting family relationships, it fully respects the freedom of individual will, completing the transition from "the individual within the family" to "the family composed of individuals."

Examining the contemporary guardianship system from historical and ethical perspectives reveals that while respecting family relationships, it also fully safeguards individual freedom of will. The achievement of this balance stems from the historical evolution of family concepts and structures—namely, the gradual shift from "the individual within the family" to "the family composed of individuals." In the traditional model, "the individual within the family" regarded the family as the basic unit. Individuals, as components of the family, were subject to its control and regulation, emphasizing the family's integration and constraints on the individual. In contrast, the trend of individualization in modern society has fostered the concept of "the family composed of individuals," which prioritizes individual autonomy and freedom of will. Family relationships are established on a foundation of equality and voluntariness. It is precisely on this dual foundation of ethical shift and institutional evolution that the contemporary guardianship system inherits historical respect for family relationships. Simultaneously, through the full recognition of individual autonomy, it aims to achieve institutional safeguards for the freedom of individual will.

As Hegel stated, the family is a prerequisite for constituting a rational civil society and must itself be based on love. But he also emphasized that individuals in family relationships manifest as independent persons, and their equal relationships are sustained through love. In Hegel's view, the mission of the family is actually to nurture qualified children who can step into civil society as

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independent individuals. Once the responsibility for educating the children is complete, the family dissolves, or its task is limited to this. "The ethical dissolution of the family consists in this, that the children are brought up to be free personalities and are recognized as adults who are capable of possessing free property of their own and founding families of their own... In contrast with this new family, the first family is reduced to a mere basis and a point of origin, and the clan is even less—it is an abstraction without rights." [15] The family is connected by love and cannot be extended to civil society, which consists of relationships among strangers requiring contracts and integrity. Individuals must ultimately enter civil society and cannot remain within the family. This indicates that the core of the modern family is non-status-based; it revolves around abstract legal rights rather than the rights and responsibilities arising from an individual's specific status.

4. Conclusion

Overall, the development of the guardianship system is a response to the needs of historical progress, and the implementation of the voluntary adult guardianship system is no legal accident. The legislative recognition of the "voluntary adult guardianship" system reflects a deeper understanding in China of the relationship between individuals and the family in the new era. The legislative orientation emphasizing respect for private will, as highlighted by the term "voluntary," can effectively supplement and address the elderly care needs of individuals in society, particularly the elderly population. The proposal of voluntary adult guardianship aims to address elderly care issues, yet its refinement and implementation target a broader range of "interdicted persons." It is a result of the individualization, separation, independence, and liberalization characteristic of modern society, as well as a new approach to managing the relationship between individuals and the family amid social development.

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