

NEOLIBERALISM, SOCIAL EXCLUSION, AND CRIMINAL JUSTICE —A CASE IN JAPAN*—

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Summary

The Japanese criminal justice system has shifted significantly toward increased punitiveness both in legislation and in the enforcement of laws as Japan has transitioned to a neoliberal nation from a welfare state. At the same time, the Japanese-style living security system, which formed during periods of rapid economic growth and depended heavily on employment opportunities created by “Japanese-style management” and regional public works, and the government-sponsored safety net structures based on the social security system both remained fragile. These systems edged toward structural collapse as global economic competition intensified alongside the emergence of neoliberalism and failed to cope with socially disadvantaged people such as the elderly, characterized by economic destitution and social isolation, and individuals with physical, mental, and intellectual disadvantages. As a result of these changes, socially disadvantaged people have been absorbed into the criminal justice system more extensively and fallen into a spiral of social exclusion.

I. *Introduction*

This paper focuses on issues that have arisen in criminal justice as Japan has transitioned to a neoliberal nation from a welfare state. During this period, the Japanese criminal justice system shifted significantly toward increased punitiveness both in legislation and in the enforcement of laws. At the same time, the Japanese-style life security system formed during periods of rapid economic growth, which depended heavily on employment opportunities created by “Japanese-style management” and regional public works, and government-sponsored safety net structures based on the social security system both remained fragile. As a result of these changes, socially vulnerable people, such as the elderly, characterized by economic destitution and social isolation, and individuals with physical, mental, and intellectual disadvantages, have been absorbed into the criminal justice system more extensively and fallen into a spiral of social exclusion.

The Japanese life security system edged toward structural collapse as global economic competition intensified alongside the emergence of neoliberalism. This change profoundly

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affected certain members of society, namely, the poor and socially isolated elderly, and individuals with physical, mental, and intellectual disadvantages. They are, as a whole, individuals excluded from labor markets as temporary employees or workers in precarious employment. Despite this development, the public welfare system has yet to play a significant role in countering this situation. Some from these marginalized groups struggled with economic destitution and lost their positions in society, which eventually led to arrests for misdemeanors, indictments, convictions of such crimes, and, consequently, incarceration in penal institutions. They were released without having any place to go to and then repeated crimes, which further absorbed them into the criminal justice system. This process is the spiral of social exclusion.

II. *Crime Prevention, Prevention of Recidivism, and Increasing Punitiveness*

Recidivism is one of the most challenging issues in crime prevention. Past studies have revealed that repeat offenses comprise a high percentage of the total number of crimes. In Japan, crimes committed by repeat offenders in 2009 accounted for 42.2% of overall arrests for non-traffic offenses as defined by the Japanese penal code. In addition, 54.8% of new inmates were reimprisoned¹.

The direction of criminal justice policies has had a relatively significant effect on the level of recidivism. Past studies have shown a higher recidivist rate after offenders are released from incarceration compared to that after offenders serve community punishments. Longer imprisonment terms also show a high probability of recidivism after the offenders are released.

For these reasons, this paper studies the punitive policies strengthening regulations against crimes using imprisonment because such policies show higher recidivist rates and thus have profound implications for crime prevention.

III. *Neoliberalism and Increasing Punitiveness*

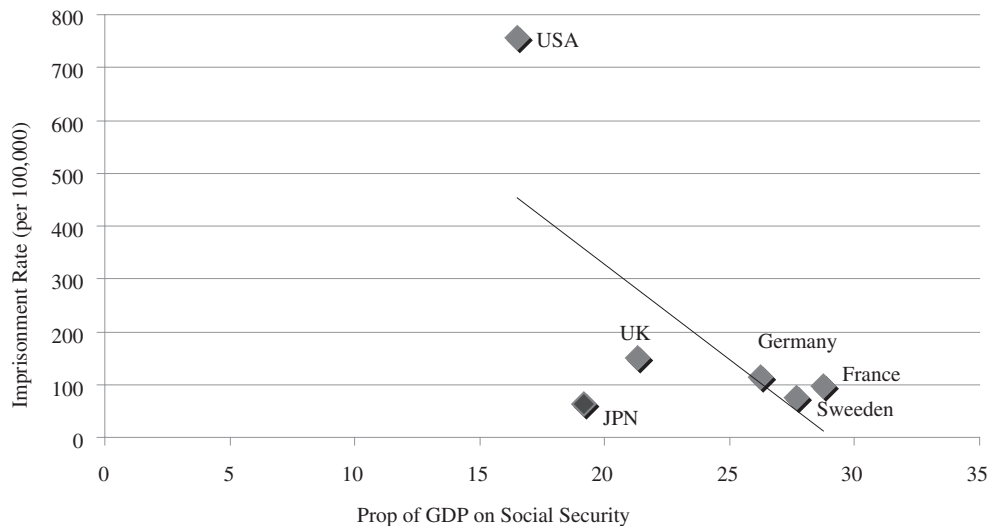
1. **The Japanese Criminal Justice System and Shift toward Punitive Policies**

The Japanese criminal justice system has long been associated with the characteristic of “tolerance” based on low crime rates. Certainly, criminal incarceration rates in Japan are still lower to date in comparison to the percentages in other nations. Comparative numbers of inmates show that the ratio in Japan is one-twelfth, less than one-half, and approximately one-half of those in the United States, the United Kingdom, and Germany, respectively. David Downes and Kirstine Hansen reported a general trend in which nations with higher ratios of social expenditure to the percentage of gross domestic product (GDP) have lower incarceration rates. They showed that Japan was an anomalous example because the incarceration rate is low despite its extremely low social expenditure². This unusual condition is still apparent to date in

¹ White Paper on Crime 2000, 127, 131.

² Downes and Hansen, *Welfare and Punishment in Comparative Perspective*, in Sarah Armstrong and Lesley McAra, *Perspectives on Punishment: The Concept of Control* (2006). See also, Beckett and Western, *Governing Social Marginality*, in David Garland (ed.), *Mass Imprisonment: Social Causes and Consequences* (2001).

FIG. 1 SOCIAL EXPENDITURE AND IMPRISONMENT RATE



Source: Roy Walmsley, World Prison Population List (8th ed.), International Centre for Prison Studies, http://www.prisonstudies.org/info/downloads/wppl-8th_41.pdf; OECD, Social Expenditure Database (SOCX), <http://www.oecd.org/els/social/expenditure>.

Japan (See Fig.1).

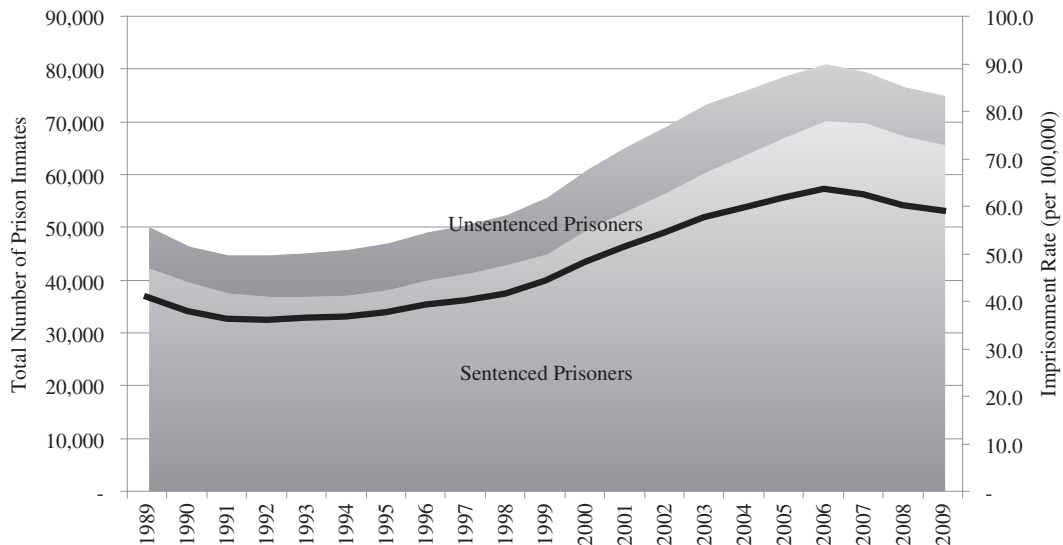
However, Japanese criminal justice trends started to change significantly in the late 1990s. Although changes have been complex, a shift toward pursuing increased severity in punishments is one of the most apparent transitions. The Japanese criminal justice system that John Braithwaite once characterized as the function of “re-integrative shaming”³ has deeply inclined toward punitive policies.

Evidence of the shift toward punitive policies can also be found in legislation and in the enforcement of laws. Trends in legislation show that legislation that contains more severe punitive aspects has been passed over the last 10 years or so based on perceptions of worsened crime conditions and deteriorations in public safety in conjunction with an increase in demand for the protection of victims and concern for victims. The Juveniles Law was amended in 2000, expanding the applications of criminal punishments to juveniles, and comprehensive amendments that raised statutory penalties were made in the Penal Code in 2004. Participation by victims of crime in criminal trials was institutionalized in 2007. The trend in passing legislation that contains increased levels of punitiveness has also been extended to the areas of procedural and treatment laws in addition to substantive laws.

Depicting every change in the enforcement of laws is difficult. However, data on the number of inmates in penal institutions in particular indicate a marked aspect, because it has been on the increase every year since 1993. It reached its highest peak since the postwar period at 81,225 inmates in 2006 (See Fig.2). The increase in the number of prison inmates caused serious prison overcrowding nationwide in the early 2000s. An analysis by Koichi Hamai

³ John Braithwaite, *Crime, Shame and Reintegration* 61-65 (1989).

FIG. 2 TOTAL NUMBER OF PRISON INMATES AND IMPRISONMENT RATE



Source: White Paper on Crime 2010.

showed that the increasing number of prisoners triggered by the rise in the number of new inmates has further profound effects on the prolonged incarceration terms. Increased sentence terms given to offenders and a shift to a stricter approach to granting parole have extended imprisonment periods. Demand for longer sentences by public prosecutors is believed to be the cause of such prolonged terms⁴.

The increase in the number of requests for an indictment against offenders pursued by public prosecutors appears to be connected to the rising numbers of those who receive prison sentences. Koichi Hamai reported an approximately 40% increase in the number of indictments between the late 1990s and around 2005. He argued that “this indicates a change in the direction of public prosecutors toward more severe punishments involving their aggressive attempts to bring indictments to obtain prison sentences instead of recommending fines.” Moreover, he asserted that the “public prosecutor’s pursuit of increased severity in penalties” signified by the increase in the number of indictments and the shift to stricter sentences caused the rise in the number of inmates, which also led to overcrowding in prisons⁵.

There has also been an increase in the number of prisoners receiving life sentences and the death penalty. The number of new inmates who received life sentences has been growing significantly, starting from the beginning of 2000. In addition, parole applications have become markedly more stringent, which means that life imprisonment has literally been evolving into “life sentences without the possibility of parole” (See Table 1). An increasing trend in handing out death penalty sentences is also apparent. The number of defendants sentenced to death at

⁴ Koichi Hamai (ed.), Introduction to Criminal Justice Statistics 56-59 (2010) [Hamai].

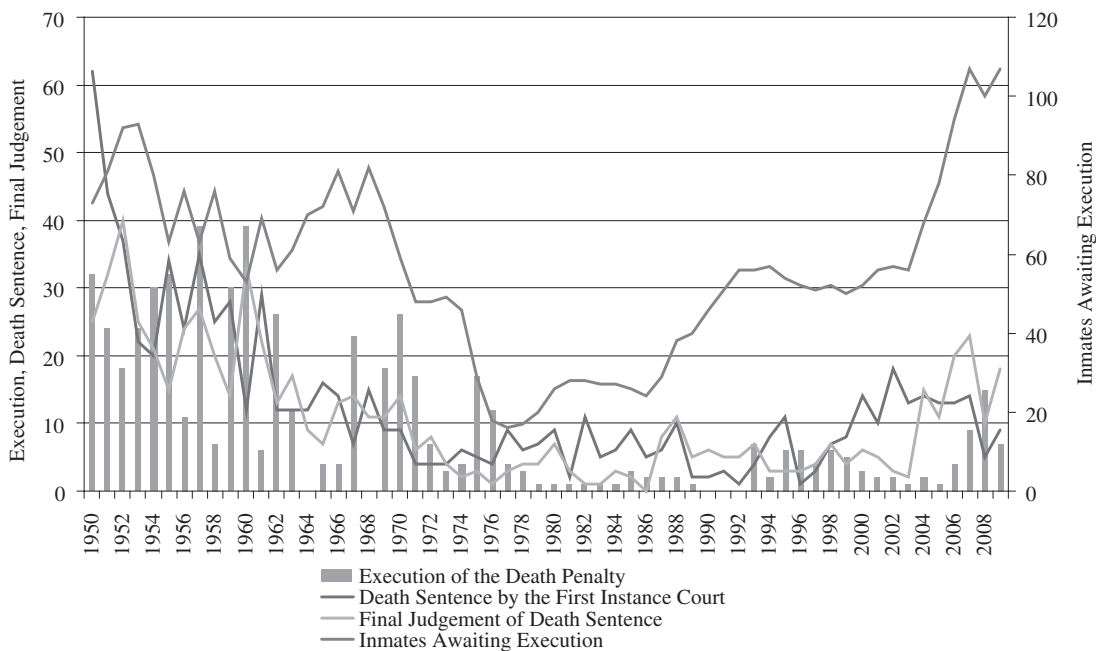
⁵ Hamai and Ellis, Genbatsuka: Growing Penal Populism and the Changing Role of Public Prosecutors in Japan. In Japanese Society of Criminology (ed.), Globalized Increasing Punitiveness and Penal Populism 96 (2009).

TABLE 1. FIGURES ON LIFE PRISONERS

	Number at the End of the Year	Newly Admitted Life Prisoners	Paroled Life Prisoners	Newly Paroled Life Prisoners	Average Duration of Imprisonment before Parole (month)	Life Prisoners Who Died in Prison
1999	1002	45	11	9	214	9
2000	1047	60	12	7	212	9
2001	1097	69	15	13	228	12
2002	1152	75	8	6	235	18
2003	1242	114	16	14	234	11
2004	1352	119	4	1	2510	15
2005	1467	134	13	10	272	12
2006	1598	136	4	3	251	15
2007	1670	89	3	1	3110	13
2008	1711	53	5	4	2810	7
Total		894	91	68		121

Source: Department of Justice, <http://www.moj.go.jp/content/000057318.pdf>

FIG. 3 OPERATION OF THE DEATH PENALTY



Source: Statistics on Correction

the first instance was 4.8 cases, on average, a year for 10 years from 1990. The average increased to 12.3 cases for the next 10 years starting from 2000; the number of executions also jumped to 4.8 cases from 3.6 cases, on average, during the same period. The number of inmates with their death sentences upheld has also been on the rise. Since 2004, the number of prisoners whose death sentences have been upheld has considerably increased as a result of the

increased number of new inmates with life sentences. More than 100 inmates have been waiting on death row since 2007 (See Fig.3).

2. Neoliberalism as the Structural Factor for Increasing Punitiveness

Increasing punitiveness has become more globalized, and many studies have attempted to better understand structural factors for such trends in criminal justice. Tapio Lappi-Seppälä from the National Research Institute of Legal Policy in Finland suggested political, economic, social, and cultural factors that promote punitive policies based on comparative analyses on European and Anglo-Saxon nations and argued that nations with the following conditions would less likely shift toward implementing punitive policies: (i) nations with strongly recognized welfare state characteristics and benevolently established social policies, (ii) nations that enjoy a higher level of social trust and strongly approved legitimacy in its political system, and (iii) nations that operate under consensus-based political culture founded on negotiations and compromises instead of competition and confrontation⁶.

Based on nation-model perspectives, criminal justice systems in welfare states tend to aim at rehabilitation, crime prevention with social policy elements as well as institutional/community treatments targeting rehabilitation. The decline in welfare states and rise in neoliberal nations is often considered to be a structural reason for current trends in increased punitive policies because the increased severity in punishments grew globally in conjunction with the global expansion of neoliberalism. For instance, Zygmunt Bauman argued that criminal justice systems have started to take responsibility for handling the “surplus population” as globalization has expanded and welfare states have declined. Using bold expressions to make his point, he described this change as “a transition to waste disposal from recycling.”⁷ In addition, Loïc Wacquant stated that people in the social periphery would fall into poverty under globalization and the neoliberalism associated with it. However, a shift toward a punishing state means a transition to punitive control that punishes the poor from control over them using elements of the welfare states. Therefore, he argued that the evolution of neoliberal nations into punishing states is an embodiment of a striking shift from welfare to workfare to “prisonfare.”⁸

In Japan, some scholars have also suggested trends in the increased severity in sentences under neoliberal nations. As global competition intensifies, increased punitiveness in neoliberal nations is a response to crimes associated with social disorder derived from increasing temporary and precarious employment and the dissolution of social security systems. Therefore, it signifies a transition to social integration with “safety” from social unity with “welfare” provided by welfare states. In this regard, based on anxiety and vexation fostered in neoliberalism and based on free market principles, the central concepts of neoliberalism—ideologies of self-determination and self-responsibility and a culture of winners and losers, which support such principles—are reflected in its hostile, intolerant control style.

⁶ Lappi-Seppälä, Explaining National Differences in the Use of Imprisonment, in Japanese Society of Criminology, *supra* note 5.

⁷ Zygmunt Bauman, *Work, Consumerism and the New Poor* (2nd ed., 1998).

⁸ Loïc Wacquant, *Prisons of Poverty* (extended ed., 2009).

3. Japanese-Style Welfare State and Increasing Punitiveness

Analyzing the “punitive turn” in late modernity, David Garland emphasized selections and coincidences faced by specific social groups on adapting to a given structure in addition to the “structural account” about regulating elements of social structural factors. With this in mind, he argued that understanding the “conjunctural account” that focuses on how a given social structure is linked to the course of political and cultural dispositions is imperative⁹. Specific analyses will be essential in comprehending how neoliberalism leads to an increased punitiveness as well as how punitive policies are formed.

On analyzing such aspects, it is also imperative to examine what welfare states are like and what types of structural characteristics they possess in targeted nations. How the effects of neoliberalism are embodied in criminal justice systems depends on the types of structural characteristics such welfare states possess.

Based on these perspectives, understanding Japan’s increasing punitiveness in the neoliberalism era requires knowledge of the structural characteristics of the Japanese-style welfare state that was formed during the periods of rapid economic growth in the mid-1950s and that continued throughout the eras of economic stability until the early 1990s. The Japanese-style life security structure is particularly important because it is connected to the issue of the spiral of social exclusion through the criminal justice system into which socially disadvantaged groups of people in society become absorbed.

IV. *Increased Punitiveness in Current Japan—The Spiral of Social Exclusion*

1. The Elderly/People with Disabilities and Criminal Justice

Increased punitiveness is apparent in many aspects including legislation and the enforcement of laws. This has shed light on issues that are difficult to recognize because many people normally do not associate them with increased punitiveness. In other words, through each step, including arrest, indictment, trial, correction, and rehabilitation that started as petty crimes in many cases, the criminal justice system extensively and deeply absorbs vulnerable members of society such as economically challenged and socially isolated elderly people, individuals with physical, mental, and intellectual disadvantages, and foreign nationals with no Japanese language proficiency.

The “White Paper on Crime 2010” includes a special feature titled “The Circumstances and Attributes of Elderly Offenders and Their Treatment.”¹⁰ The report reveals that the number of elderly offenders cleared and prosecuted for non-traffic penal code offenses grew 4.9 times (See Fig.4) and 7.5 times more, respectively, in the 20-year period between 1998 and 2007, while the general population over 65 years old only doubled during the same period. Similarly, the numbers of new inmates and newly received probationers/parolees also increased six times (See Fig.5) and five times more, respectively, in the 20-year period. These trends confirm much faster increases in the number of elderly processed through the criminal justice system than the

⁹ David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* 201-203 (2001).

¹⁰ English Edition of White Paper on Crime 2010, <http://hakusyo1.moj.go.jp/en/57/nfm/mokuji.html>.

FIG. 4 THE NUMBER OF THE ELDERLY CHARGED WITH NON-TRAFFIC OFFENCES AND ITS RATE PER 100,000 ELDERLY

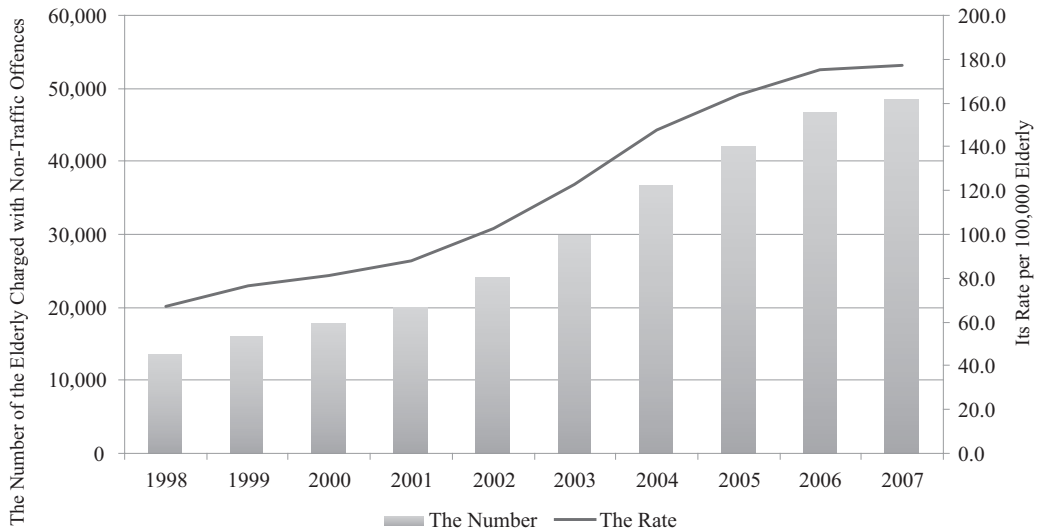
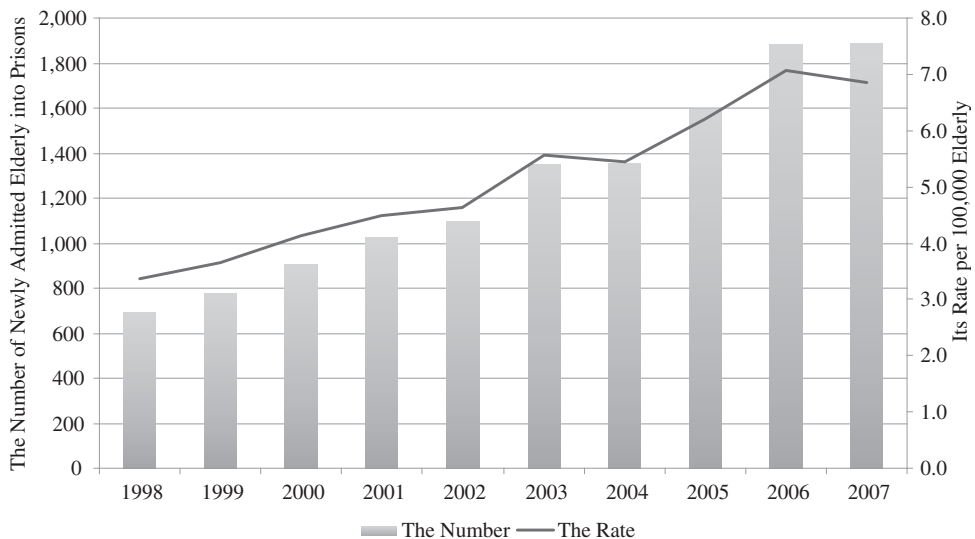


FIG. 5 THE NUMBER OF NEWLY ADMITTED ELDERLY INTO PRISONS AND ITS RATE PER 100,000 ELDERLY



pace of population aging in general society. The ratios in the number of arrests, those found guilty, and prisoners accounted for by the elderly are significantly higher in comparison to other nations (See Fig.6 and 7).

FIG. 6 ELDERLY RATE OF PERSON CONVICTED

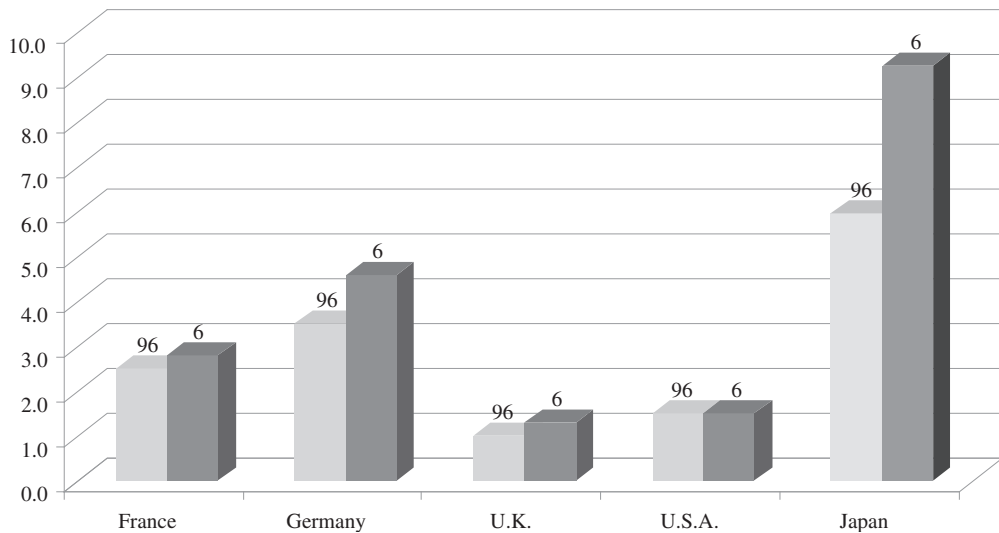
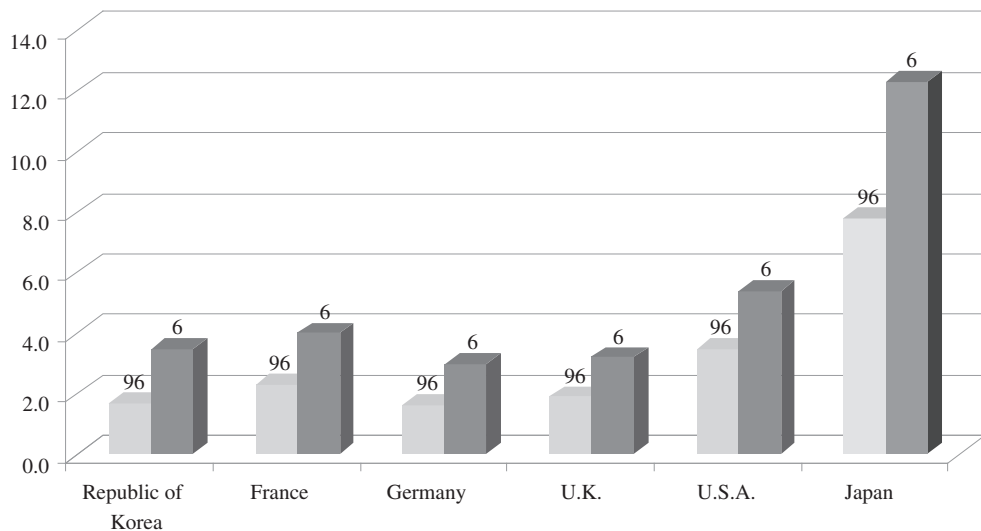


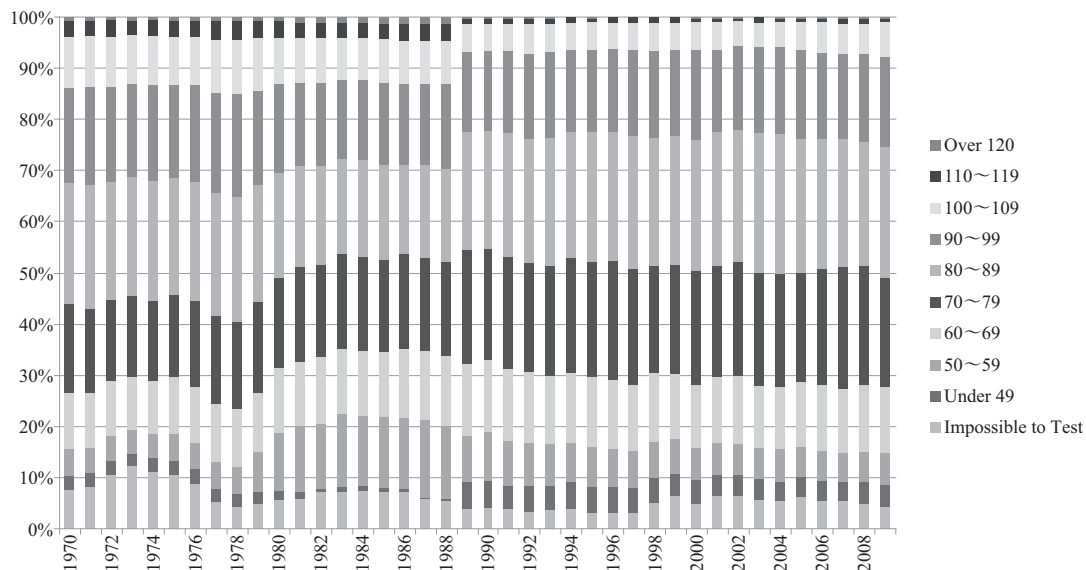
FIG. 7 ELDERLY RATE OF PERSON IMPRISONED



Source: White Paper on Crime 2008.

This white paper argues that as the criminal tendencies of elderly offenders' progress, it destabilizes their residences and deteriorates relations with their family members and relatives. As a result, they become further isolated from society. Many of them also have some experience of sustained substance-dependence-related disorders such as the abuse of alcohol. However, they remain unassisted with welfare support to treat such issues in many cases. In

FIG. 8 IQ COMPOSITION OF NEWLY ADMITTED SENTENCED PRISONERS



Source: Statistics on Correction.

addition, their employment statuses become unstable as their criminal tendencies progress, which increases the ratios of low income individuals. In addition, the ratio of the elderly who generate no income without receiving welfare support such as public assistance has been rising. Therefore, the analysis asserts that they have been placed in economically unstable environments, increasing the occurrences of crime by elderly people.

Based on his time served in prison, Jyoji Yamamoto, a former member of the House of Representatives of Japan, reported the presence of habitual offenders with disabilities who repeatedly committed crimes and were sent back to prison. They receive insufficient personal or material assistance within prisons, in society, through public welfare support, or from family or local communities to rebuild their life. Yamamoto's description depicts a reality in which people with disabilities or the elderly who lose their place in general society live and consider prison to be their last "home."¹¹

As regards the IQs of new inmates in 2009 (See Fig.8), it was shown that 22.5% scored 69 or below and 21.3% tested in the range of 70–79. In addition, 6.2% of the inmates were categorized as "unable to test." Special research conducted in 2006 reported that only a small portion of people with disabilities held a Rehabilitation Certificate, which would allow them to receive welfare assistance.

2. The Spiral of Social Exclusion

Some elderly people have difficulty in sustaining an economically stable life and cannot

¹¹ Jyoji Yamamoto, *Memories of Life in Prison* (2003); *Repeated Offenders with Disadvantages* (2006).

secure support from their family members or relatives. Once these elderly people and those with physical, mental, and intellectual disadvantages are incarcerated for their crimes and then released on the expiration of their prison terms, they struggle with anxiety regarding their future and live a life isolated from society. They cannot obtain societal support and public welfare assistance to rebuild their lives. In addition, they have an extremely difficult time in securing stable employment, which leads them to spend all the wages that they earned in prison. As a result, they become desperate and recommit crimes such as shoplifting at convenience stores or leaving a bar without paying the bill, and then are sent back to prison for a longer term. This scenario is not an unusual path for many. Even after returning to society when prosecution is dropped for their first encounter with the law or when a suspended sentence is given to those offenders as a result of trial, they follow similar routines, repeat crimes, and are given harsher sentences in many cases as long as their living environments offer no opportunity for improvement.

Instead of receiving welfare assistance, those who have extensively and deeply integrated into the criminal justice system tend to end up being incarcerated in penal institutions. After being released, they suffer more unstable living conditions and face economic destitution, while they lose social ties and become further isolated from society. This lack of stability and isolation often prompts them to repeat crimes, causing them to be sent to penal institutions again. This pattern is the spiral of social isolation through the criminal justice system.

V. *Life Security Structure in Japanese-Style Welfare State*

1. The Increased Punitiveness in Japan and Japanese-Style Life Security

Many believe that the transition to a neoliberal state has affected the increased punitiveness in Japan. However, it is imperative to first examine how socially vulnerable members of society fall into the spiral of social isolation through the criminal justice system.

Understanding the characteristics of the Japanese-style welfare state—especially what role the Japanese-style life security system has been expected to play and how it has declined due to the shift toward neoliberalism—is essential in examining the impacts of neoliberalism on the Japanese criminal justice system. In this context, Garland’s “conjunctural account” will be considered.

The concept of life security includes employment and social security. Life security in Japan has long depended on employment instead of public social security systems. Therefore life security, the concept of which covers both employment and social security, becomes imperative.

2. Rapid Economic Growth and Formation of Japanese-Style Life Security

Japan experienced rapid economic growth called “Japan’s miracle” between the mid-1950s and the early 1970s. During this period, a Japanese-style life security structure was established, which reflected structural characteristics of the Japanese-style welfare state.

Taro Miyamoto, a political scholar, pointed out the following three characteristics of Japanese-style life security: (i) formation and establishment centered on employment security in

addition to small social security expenditure during the pursuit of economic growth; (ii) a relatively small economic disparity, despite fragile social security, due to life security with virtual employment security under the “Japanese-style management” using lifetime employment and the seniority-based wage system as well as under the “Construction State,” in which regional economies are heavily dependent on public works; and (iii) relatively small social security systems directed toward the latter part of people’s lives (i.e., after retirement) when employment security can no longer guarantee their life security¹².

In addition, Yoshinori Hiroi, a public policy scholar, suggested the following two reasons for the low social security benefits in Japan: (i) the strong presence of “informal” and “invisible social security” supported by lifetime employment-based corporations and nuclear families, and (ii) the existence of public works-style social security structures that started around the 1970s, in which public works virtually function as a social security system¹³. Hiroi argued that the Japanese-style life security system based on such employment security was “designed to operate as the Welfare Department in so-called Japan, Inc.” As a result, people within the “Production (Economic) Department” enjoyed certain levels of payment, while those who failed to be part of the “Production Department” were often placed outside of the main interests¹⁴.

In other words, the Japanese life security system structurally relied heavily on employment buttressed by Japanese-style management using lifetime employment and the seniority-based wage system in addition to regional public works, while publicly sponsored social security remained fragile. The Japanese-style life security structure had growth-oriented or development-principled characteristics in terms of achieving economic growth and life security cyclically using employment as a catalyst. As a backbone of the Japanese-style welfare state, such life security structures were formed during the periods of rapid economic growth and maintained until the early 1990s.

3. Neoliberalism and Collapse of Japanese-Style Life Security

The Japanese-style life security system underwent significant transitions due to advancement of economic globalization, intensified economic competition, and the rise of neoliberalism in the mid-1990s. This period was a defining moment for the collapse of the Japanese-style welfare state (See Fig.9).

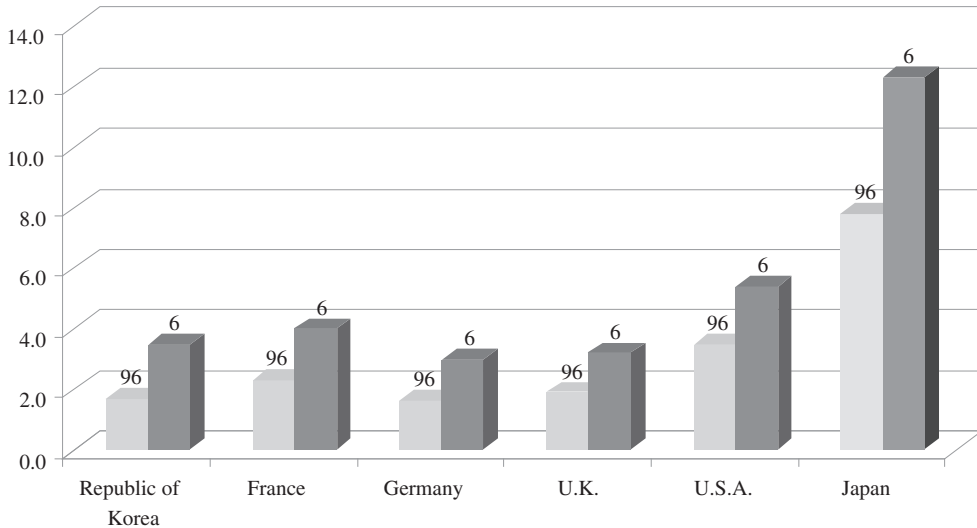
The 1995 report “Japanese-Style Management in the New Era,” published by the Japan Federation of Employer’s Associations, an organization that consists of executives from large corporations, depicted changes in the employment rules in the private sector as global market competition expanded. Along with overseas transfers of domestic industries and shifts in industrial structures, this change signified the dissolution of the stable employment security system under the Japanese-style management model. Temporary and precarious employment such as part-time jobs, side-jobs, and dispatched work increased instead of lifetime employment or the seniority-based wage system under the Japanese-style management model. In addition, although life security that relied on public works had production- or growth-oriented

¹² Taro Miyamoto, *The Politics of Welfare: Democracy, Employment and Welfare in Japan* 31-34 (2008); *Life Security* 39- (2009).

¹³ Yoshihiro Hiroi, *Sustainable Welfare Society* 53 (2006).

¹⁴ *Id.* at 23.

FIG. 9 UNEMPLOYMENT RATE AND RATIO OF IRREGULAR EMPLOYMENT



Source: The Statistics Bureau and the Director-General for Policy Planning of Japan, Labor Force Survey.

characteristics that contributed to GDP growth through a chain reaction of increased demand, it actually caused an accumulation of fiscal deficits. While regional finance became strained, stable employment security supported by regional public works also collapsed.

This process showed that stable employment security in the past had already lost its foothold. However, the already-fragile social security system failed to function adequately and alleviate the effects of such transitions. As a result, the collapse of Japanese-style life security that depended on employment security continued unabated.

4. Collapse of Japanese-Style Life Security and Spiral of Exclusion toward Socially Vulnerable People

Those who spilled over from employment networks and faced a disadvantageous environment in the general labor market were pushed toward marginal lives as they slipped through social security-based safety nets and became “unemployed refugees” whose temporary employment contracts had been terminated, the so-called Internet café refugees, or the homeless. Makoto Yuasa, a representative of an NGO that provides support for homeless people, called this phenomenon the “Slide Society”¹⁵. The presence of informal support by family members or local communities would have helped prevent these people from further falling into marginal conditions. However, those without such assistance fell into a downward spiral.

The most severely affected segments of the population include the isolated elderly, living in poverty with no social ties, and individuals with physical, mental, and intellectual

¹⁵ Makoto Yuasa, *Escape from “Slide Society”* 19 (2008).

disadvantages. They tend to be most excluded from the general labor market, even more so than temporary employees or workers in precarious employment. Against the backdrop of the synergistic effects caused by the very fragile social security safety nets, if the employment-security-dependent life security structure collapses, the most excluded groups of people from the general labor market will lose all life security support and become marginalized.

Makoto Yuasa calls this stratification of social exclusion “five-phased exclusion.” In other words, this segment of the population is excluded from the educational process, employee benefits, family welfare, and public welfare in addition to “exclusion from oneself.” Exclusion from oneself reflects the loss of “the purpose of living one’s own life and the meaning of such actions as well as the reason for working and the significance of such engagement.” “When individuals face the first through fourth phases of the exclusion and other people simply view such experience as ‘their fault’ based on the ‘self-responsibility’ principle, the excluded groups of individuals may internalize it as ‘their own fault.’ This ultimately pushes them to the edge where they cannot retain their own dignity or care for themselves¹⁶.”

Suicide is the first consequence of such five-phased exclusion conditions. The number of people who committed suicide in 1991 was 21,084. However, the number has exceeded 30,000 since 1998 and reached 32,845 in 2009. Jobless segments of the population such as housewives, the unemployed, and those who live on a pension accounted for 57.0% of those who committed suicide in that year. In addition, suicides associated with economic and life issues accounted for 34.3% of all 24,434 suicides whose motives were specified. Homeless people are the second consequence arising from the exclusion phases. Surveys by the Japanese Ministry of Health, Labour and Welfare reported that the numbers of homeless individuals were 25,296, 18,564, and 16,018 in 2003, 2007, and 2008, respectively. Offending is the third consequence of the exclusion phases.

The criminal justice system functions to further strengthen the spiral of social exclusion when socially vulnerable members of society commit crimes. Koichi Hamai argued that compensating for damage is more difficult for suspects or defendants with disadvantages in economic strength, social relations, and intellectual abilities. He also suggested that these offenders would be considered more likely to repeat crimes. They would also be less likely to receive suspension of indictment, fine imposed by summary trials, or suspended sentence but rather tend to be treated more harshly in every aspect of the criminal justice system because they are not skillful in apologizing appropriately in response to given situations or in defending themselves¹⁷.

This trend originates from and is further magnified by the structure of the Japanese criminal justice system. Public prosecutors and judges enjoy a wide range of discretion in the Japanese criminal justice system in each area of decision making on whether to pursue prosecutions or non-prosecutions, decisions on formal trials or summary trials as well as decisions in sentencing by the court in response to prosecutor’s demand for severe punishments. This leeway further facilitates an environment where socially vulnerable individuals with disadvantages in economic strength, social relations, and intellectual abilities suffer disadvantageous treatment.

The trend in the last 10 years indicates that an increase in the percentage of elderly people

¹⁶ Id. at 58.

¹⁷ Koichi Hamai, *Evidence-Based Criminal Justice Policy 200-203* (2011).

who have been indicted and received a prison sentence has been significantly higher than that of those cleared for the offense. This increase in the rate of elderly imprisonment shows that increased punitiveness has strengthened the trend in which the vulnerable in society are treated more harshly in the criminal justice process.

Moreover, once these individuals fall into the criminal justice system—especially if imprisoned due to prison sentences in the Japanese traditional structure, signified by the fragmentation between the criminal justice system and welfare administration—they lose the possibility of receiving welfare support. This also makes it very difficult for them to obtain assistance from family and local communities. If those who experience the criminal justice process receive no welfare assistance or family and community support, are pushed into desperate situations, and then repeat crimes, they are more deeply absorbed into the criminal justice system as habitual offenders. This process is the spiral of social exclusion through the criminal justice system. This reality is apparent in data that show that 70% of those over 65 years of age released on expiration of their prison terms are incarcerated again within five years and three-quarters of reoffenders over 65 years of age repeat crimes within two years.

VI. *Conclusion*

1. **Neoliberalism and the Spiral of Social Exclusion through the Criminal Justice System**

As previously mentioned, the increased punitiveness associated with the transition to a neoliberal state in Japan has integrated greater numbers of socially vulnerable people deeper into the criminal justice system and caused a spiral of social exclusion.

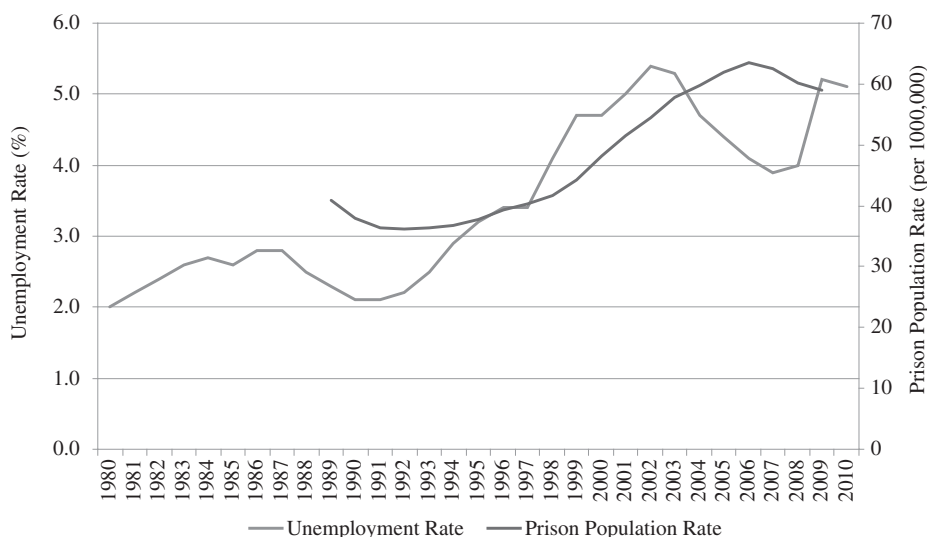
The characteristics of the Japanese style-welfare state formed during the periods of rapid economic growth had significant impacts on such developments. In other words, the Japanese-style life security system heavily depended on employment opportunities brought by Japanese-style management and regional public works, while the public social security system remained fragile. Such Japanese life security structures eventually suffered structural collapse as globalization intensified and neoliberalism emerged. The collapse of the life security system and the fragile social security system further deepened the environment of social exclusion against certain segments of people in society, including the poor, lonely elderly people and individuals with physical, mental, and intellectual disadvantages. As a result, this transition led them into a spiral of social exclusion triggered by the crimes they committed.

2. **Social Security and Criminal Imprisonment**

Downs and Hansen show that, in contrast to general trends, Japan's percentage of criminal imprisonment is low despite its low ratio of social expenditure to GDP. This uncommon tendency is still prevalent in Japan (See Fig.1).

The Japanese-style life security system has probably played a role in this trend. The role of public social security systems in the Japanese-style welfare state was minimal, which is indicated by extremely small social expenditure in Japan. Despite this structure, stable employment opportunities created by the Japanese-style management and regional public works have supported people's life security. The life security structure, which depended heavily on

FIG. 10 UNEMPLOYMENT RATE AND PRISON POPULATION



Source: White Paper on Crime 2009, 2010; The Statistics Bureau and the Director-General for Policy Planning of Japan, Labor Force Survey.

such employment creation, has probably played a role in maintaining this unusual characteristic of a low criminal imprisonment rate in Japan although social expenditure has been kept to a minimum.

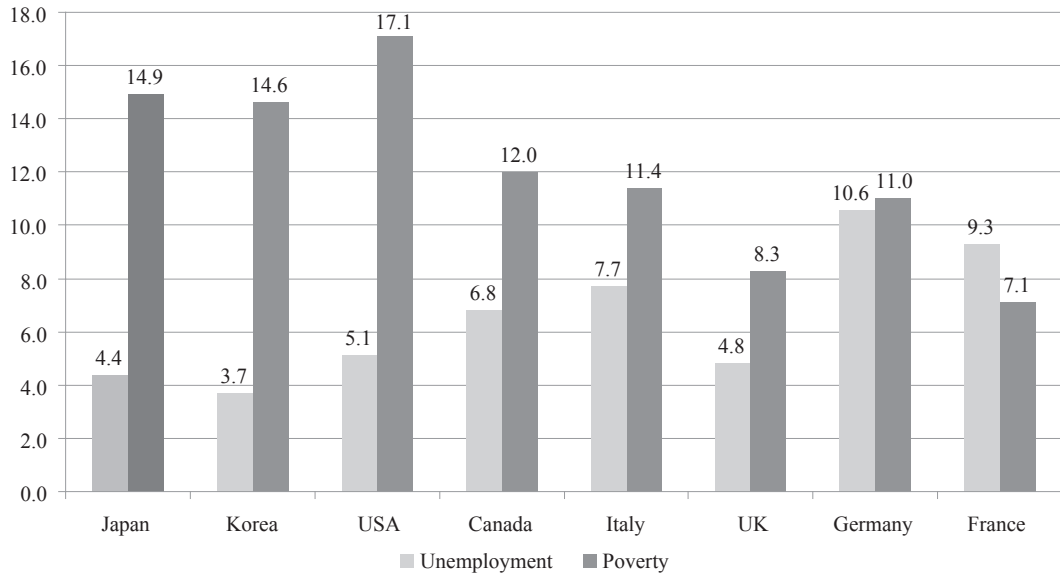
3. Unemployment Rate and Low Criminal Imprisonment Rate

The rate of criminal imprisonment in Japan has shown a significant increase recently. However, international comparisons show the ratio is one-twelfth, less than one-half, and approximately one-half compared to the United States, the United Kingdom, and Germany, respectively, which indicates that it is still at a low level. This finding implies that the employment-dependent life security structure might have affected the low level of criminal imprisonment in Japan.

There are many studies on relations between unemployment rates in general society and the criminal imprisonment rate¹⁸. The studies find that an increase in the unemployment rate in general society leads to an expansion of criminal imprisonment, contributing to absorbing the surplus labor force. Certainly, unemployment rates in Japan have significantly increased since the mid-1990s as global competition has intensified. The unemployment rates remained very low at 2% or so until the beginning of the 1990s after the periods of rapid economic growth. However, the rates increased to 4.1% and 4.7% in 1998 and 1999, respectively, and reached a

¹⁸ e.g., Georg Rusche and Otto Kirchheimer, *Punishment and Social Structure* (1939); Sabol, *The Dynamics of Unemployment and Imprisonment in England and Wales, 1946-1985*, 5 *Journal of Quantitative Criminology* 147 (1989); Sutton, *Imprisonment and Social Classification in Five Common-Law Democracies, 1955-1985*, 106 *American Journal of Sociology* 350 (2000).

FIG. 11 UNEMPLOYMENT RATE AND POVERTY RATE (2005)



Source: OECD, *Growing Unequal? Income Distribution and Poverty in OECD Countries*, www.oecd.org/els/social/inequality/GU.

peak at 5.4% in 2002. Such prolonged periods of increased and high levels of unemployment rates correspond to periods when the rates of criminal imprisonment also increased (See Fig.10). However, even during the time when the unemployment rates rose, international comparisons showed that the unemployment rates in Japan still remained at a relatively low level. The unemployment rate in Japan in 2005 was 4.4% compared to 5.1%, 9.3%, and 10.6% in the United States, France, and Germany, respectively (See Fig.11).

The relatively low employment rate in Japan has not only been due to the continuing tradition of Japanese-style management that has ensured long-term employment, but it is also a product of the transition to temporary and precarious employment including dispatched work employment, part-time jobs, and side jobs. These jobs have been accompanied by downgraded treatment to adjust to the surplus labor force and control labor costs. This transition is probably a reflection of the employment-dependent Japanese-style life security tradition. If a correlation between the unemployment and criminal imprisonment rates exists, the still relatively low unemployment rate (despite its recent increase) may have some impact on the lower criminal imprisonment rate in Japan compared to the rates in other nations, especially in European countries, even during the period of increased punitiveness.

Additional empirical studies are necessary to understand the relation between the unemployment and criminal imprisonment rates because the criminal imprisonment rate increases when the unemployment rate rises in Japan. One study argues that these two have no positive correlation in the era of post-Fordism characterized by the recent advancement in microelectronics technologies and globalization¹⁹. Therefore, additional studies are necessary to comprehend the relation.

This paper examines the increased punitiveness in Japan and the implications of the spiral of social exclusion in which the socially disadvantaged members of society find themselves. The analysis suggests that such developments relate to the structural changes in which the Japanese-style welfare state formed during periods of rapid economic growth collapsed—and, with it, the Japanese-style life security system—as a result of intensified global competition and the rise of neoliberalism.

¹⁹ Michalowski and Carlson, Unemployment, Imprisonment, and Social Structures of Accumulation: Historical Contingency in the Ruche-Kirchheimer Hypothesis, 37 *Criminology* 217 (1999).