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A CRITICAL ANALYSIS OF JUVENILE JUSTICE SYSTEM IN JAPAN: DEBASEMENT OF THE JUVENILE LAW TO ATTAIN UNARTICULATED SOCIAL AND ECONOMIC PURPOSES*

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I. An Introduction

It is often highly praised as one of the most astonishing phenomena after World War II that Japan has been blessed with remarkably low crime rates. There appears to be no doubt that Japan is enjoying the lowest crime rates among the developed countries (See Fig. 1) and we Japanese should be proud of it as well as proud of high industrial techniques producing Nissan, Toyota, Canon and so on, although unfortunately we cannot export our law crime rate to foreign countries.

In spite of this low crime rate, this is my opinion that there is a lot of problems we need critically analyze in the administration of Juvenile Justice System in Japan. So, here, I want to point out, among others, some of the phenomena we may call factual deviation by the related governmental agencies from the fundamental principles set by Law. Let me begin with the basic principles set by the Japanese Juvenile Law.

II. Basic Principles and Structures of Juvenile Justice System in Japan

The basis for the existing juvenile justice system in Japan was implanted by the enactment of the present Juvenile Law in 1948, three years later after World War II. It be-

* This is a full paper presented at the ASC Conference in Chicago, November 9, 1988.
FIG. 1. MAJOR CRIME INCIDENCE RATE AMONG THE DEVELOPED COUNTRIES, 1987

2. Crime incidence rate per 100,000 persons.
   West Germany: Straftat excluding traffic offense in *Polizeiliche Kriminalstatistik*.
   France: Crime et delit excluding traffic offense in *La criminalite en France, Annuaire statistique de la justice*.
   Japan: Criminal Code offense excluding traffic professional negligence in *White Paper on Crime*.

longs to the first series of the then-passed statutes such as The Fundamentals of Education Act and The Child Welfare Act faithfully reflecting the liberal and democratic spirit of the Japanese Constitution established just one year before its enactment. Thus it is quite natural that the juvenile law has completely diverted from such prewar values as militarism, nationalism and imperialism, but instead premises the newly established constitutional values like peace, individual dignity and democracy. We can safely say that the current juvenile law, as a typical product of the democratization movements era after World War II, reflects the society's earnest commitment in those days to ending the abuse of children who were previously forced to share certain nationalistic values and to victimize themselves for militarism.

Then what are the central characteristics instituted in Juvenile Law in terms of ideal or purpose of the law, categories of delinquencies, structure of the juvenile justice system, and treatment or disposition of delinquent juveniles? Let us take a short look at the four features widely perceived among Japanese scholars and practitioners as core frameworks (or major principles) built in the law to cope with delinquent problems in Japanese society.

(a) First of all, in terms of ideals of the Law, there are described in its first article as follows:

**Article 1.** The object of this Law is, with a view to the wholesome rearing of juveniles, to carry out protective measures relating to the character, correction and environmental adjustment of delinquent juveniles. . . .

This clause clearly shows that the whole juvenile justice system and its administration should be predicated on the notion of "the wholesome rearing of juvenile." Although there is no doubt that the vagueness and polysemy of the concept of "wholesome rearing" would pose a lot of difficult and intricate analysis in order to interpret it, but still the ideal
will maintain utmost importance when we consider that it will at least inhibit the positive perversions of the juvenile justice system instituted by the current law to the ends of public security or social prevention. The maintenance of social order or security is not considered as a direct object of the juvenile justice system, but if possibly considered, then as a result of “wholesome rearing of juveniles.” Moreover, taking into consideration the fact that the law is a sister law to other educational and welfare legislatures such as “The Fundamentals of Education Act” or “Child Welfare Act,” and in consideration that this law was enacted as expressing concrete idea of the spirit of the new Constitution after serious reflections on abuses and victimization inflicted upon children under the name of national purposes in preWar days, the concept of “wholesome rearing” should be understood from the standpoint of the child’s constitutional right to grow and develop as a human being.

What I want to point out here is that the Japanese Juvenile Law is giving the first and perhaps exclusive priority to the welfare of delinquent juveniles when government agencies intervene in juveniles to cope with their delinquency problems.

(b) Secondly, what constitutes delinquency? The clear definition of delinquency is so important, because as you know it could set and clarify the boundaries within which the government agencies, especially law enforcement officers, who usually initiate juvenile cases at the first stage, can interfere in juveniles. Relating to this point, the Japanese Juvenile Law does not have direct provisions which define what delinquency constitutes, but instead it defines the categories of delinquent juveniles who come under the Family Court jurisdiction and are diverted in treatment from ordinary criminal procedures:

Article 2. The term “juvenile” as used in this Law means any person under 20 years of age.

Article 3. The Family Court shall have jurisdiction over the following juveniles:
(1) Any juvenile who is alleged to have committed an offense;
(2) Any juvenile under 14 years of age who is alleged to have violated any criminal law or ordinance;
(3) Any juvenile who is prone to commit an offense or violate a criminal law or ordinance in view of his character or environments, because of the following;
   (a) That he habitually does not subject himself to the reasonable control of his guardian;
   (b) That he stays away from his home without good reason;
   (c) That he associates with a person of criminal propensity or of immoral character or frequents places of evil reputation;
   (d) That he has the propensity to commit acts harmful to his own moral character or that of others.

Thus the Law provides the three categories of delinquent juveniles, whose conduct might be considered to be delinquency. (1) The first one is the category called Juvenile Offender (Hanzai Shonen) who is between the ages of 14 and 19 and commits an offense provided for in criminal statutes, (2) the second is the Law-Breaking Child (Shokuho Shonen), who commits an offense provided for in criminal statutes as the first category juveniles do but whose age is under 14 (under the age not criminally responsible for his offense), and (3) the third is the Pre-delinquent Juvenile or Status Offender (Guhan Shonen), who is under 20 and considered likely to commit an offense in future in view of his character or environ-
The last category of Pre-delinquent Juveniles is now posing controversial debates in Japan also, as once in the United States, regarding whether or not this type of “catch-all” clause should be maintained in the Law. It is my opinion that it definitely needs to be reconsidered, but what I want to emphasize here is not this point. Whatever implications might be given to the concept of Pre-delinquent Juveniles, the Law is placing restrictions on the exercise of state power to intervene in juveniles within only those three categories of delinquents it defines. It means that the “pre-predelinquent” or just “bad behavior” boys and girls should be free from the governmental intervention aimed at preventing crimes or delinquencies. It may sound rather strange to you to emphasize such a self-evident proposition, but this second principle framed by the Law turns out a matter of great significance when the uniqueness of the delinquency policy designed by the Japanese police agency is taken into account as I mention later.

(c) The third basic framework set by the Law is that an exclusive power to intervene with juveniles is given to the Family Court. Police officers and prosecutors are allowed to investigate suspected juvenile cases, but if they believe that there is suspicion of an offense or that there are grounds for the case to be within the jurisdiction of the Family Court, they are always obliged to send the cases to the Family Court. The Law delegates all the discretionary power to the Family Court. They decide whether or not to put a case to hearing, to retransfer a case to be prosecuted according to the ordinary criminal procedures, or what treatment should be given to a juvenile after a finding of delinquency and the necessity of protection.

Thus the principle of “sending all the cases to the Family Court without fail” has been considered to be one of the most cardinal frameworks set by the Law. Its intent is to shut out all the possible influences of police officers and prosecutors whose primary role is considered to lie in suppressing and detecting crimes and calling for punishment from the standpoint of social order or public security. It is based upon the premise that the Family Court’s function to protect juveniles is not compatible with the crime control function of police and prosecutor. This completeness of the Family Court’s monopolization of the authorities in handling juvenile delinquent problems constitutes the third characteristics of the current Juvenile Law.

(d) As it is clear from what I have already mentioned above, the fourth characteristic is the priority of protective measures over punishment. To attain this purpose the Law instituted, among others, the Family Court Social Caseworker System as an organ specifically to assume educational and welfare role of the Court, and a variety of protective measures including dismissal without hearing.

### III. Factual Deviation from and Recent Movements against the Basic Principles and Structures

Recently in Japan there have been occurring phenomena we may call factual deviation from those above-mentioned four basic principles and structures. As I mentioned before, they have been set by the Juvenile Law to design a core framework to cope with juvenile delinquent problems in Japanese society. Nowadays, however, especially during the past
ten years, governmental agencies have been developing policies which are not considered to be based upon the "wholesome rearing" principle and have also been implementing measures widely exceeding the limits of the core framework placed by the Law, without any articulated legal basis. The following diagram illustrates the outline of how the deviation is taking place:

<table>
<thead>
<tr>
<th>Ideal</th>
<th>Behavior to be intervened</th>
<th>Authority</th>
<th>Measures</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1) Basic framework set by the Law</td>
<td>Wholesome rearing</td>
<td>Three categories of delinquency</td>
<td>Family Court Preventive measures</td>
</tr>
<tr>
<td>(2) Deviation from basic framework</td>
<td>Social order and security</td>
<td>Bad behavior</td>
<td>Police</td>
</tr>
</tbody>
</table>

Let me explain part of the deviation phenomena prevailing at the police level and inside the Family Court by illustrating some concrete examples.

(a) The first phenomenon I have to illustrate is the increasing police power to intervene in just "Bad Behavior" boys and girls, who are usually considered to include, among others, the juveniles who smoke, drink, hang around a public resort late at night, associate with undesirable persons, play truant, and/or run away from home. But these are the juveniles never classified, from legal point of view, among the above-mentioned three categories of delinquents. They are different from the "Pre-delinquent" juveniles, because they are not legally considered to be prone to commit an offense in future. The Police Agency expanded its jurisdiction over intervening in those "Pre-predelinquent" boys and girls under the name of "Juvenile Guidance" (Shonen Hodo) without any articulated statutory basis. Thus, in 1985 "Bad behavior" boys and girls account for 84 percent (1,477,134 in real number) among all the juveniles (1,766,358) who were intervened by police. That number is 326 times higher than that of "Pre-delinquent Juveniles" processed by police in the same year and also ten times more than 1975 statistics.

The idea of "Juvenile Guidance" is not new and dates back to as early as 1949 when Juvenile Police was first established. But the idea used at that time was rather passive. Even the police agency itself admitted that the role of "Juvenile Guidance" for bad behavior boys and girls was just a temporary substitute task imposed upon police officers until other welfare and educational agencies in society were ready to perform their primary functions. Accordingly it was considered a factual action taken by police and should be limited to unavoidable circumstances.

Nowadays, however, little of this self-restraining attitude toward "Juvenile Guidance" have been observed among police agencies. On the contrary it has been often reiterated in directives issued by National Police Agency that "Juvenile Guidance" should be given the highest and central maneuvering position to cope with delinquency problems. They even insist today that they are allowed to conduct "Juvenile Guidance," according to the general Clause of the Police Law, as one of the intrinsic police duties to prevent crimes and to maintain social order by taking direct or indirect necessary measures.

Thus police agencies are expanding and strengthening "Juvenile Guidance" activities by organizing volunteer citizens whom they commission as Cooperators for "Juvenile
Guidance,” or by setting up “Special Month” for that activity. Under the policy “every juvenile must be considered possibly subject to the Guidance because it is hard to tell which girl is good or which boy is bad,” tremendous amount of juveniles labeled “Bad behavior” boys and girls are guided on streets, at stations, at parks and so on. They are advised and admonished by police officers and often put on continuing surveillance. The police reports the case to parents, school and employer asking them to control the juvenile with much supervision. All these cases are disposed only within the police authority and never referred to the Family Court.

(b) The second phenomenon I want to point out as a deviation from the core framework of the Juvenile Law is closely related to the above. As the expansion of the police authority to intervene in the “Bad behavior” boys and girls through “Juvenile Guidance” clearly symbolizes, so the police agencies today is functioning as the No. 1 pivotal agent in community to achieve the “Wholesome Rearing” purpose.

In 1982 the Police Institution Agency issued a very important policy-changing directive titled “Comprehensive Plan for Controlling Juvenile Delinquency.” In essence the Plan says that although the police activities for controlling juvenile delinquencies so far had been rather passive and limited to the ex post facto measures to find, investigate and send delinquent cases to the related agencies, a much more positive, active measures, especially the protective measures to head off delinquencies in advance should be implemented in order to attain more efficient delinquency control.

According to this fundamental change of policy, a variety of programs have been developed and strengthened since. Among others, “Juvenile Guidance” activity, as I have already mentioned, have been extremely expanded and now covers not only “Bad behavior” boys and girls but also the juveniles dismissed without or after hearing at the Family Court. As a result some of the juveniles judged unnecessary for treatment by the Court must be subject to the continuing Guidance (or surveillance) as a kind of aftercare by police.

Also according to this policy change, the police began to secure active and close cooperation from schools and employers and succeeded in establishing the system to hold a routine conference with each of them. Ninety-three percent of schools from elementary to senior-high have submitted to the police lists of names, addresses and telephone numbers of both students and parents.

Another program newly strengthened by the directive is called “Police Officers’ Social Participation Activity” and its intent is to give all the juveniles in society the moral education to give them the ability to distinguish between what is good and what is bad. One famous Professor of National Police Academy writes about the Plan and concludes his paper emphasizing like this, “Children are not such creatures that grow and develop of themselves, but such creatures that are nurtured and trained for by adults’ efforts in community. Accordingly the Plan should be developed and implemented with focus on this perspective.”

Let me point out an event which can be seen as one of the most symbolic features reflecting the police change. The term “delinquency for fun” or “fun type delinquency” which used to be crowded in white papers has completely disappeared from all the governmental printed materials since the directive was issued, and now it has been replaced in a new term “the first stage type delinquency.” It is believed that the word “fun” sounds too soft and too permissive that readers may be misled as if delinquency engaged in for fun could be acquiesced.
Now let us change the subject and look at the Family Court. Here has occurred the same line of changes as have occurred at the police level. In a word we can see the phenomena symbolizing the Family Court's degradation from an agency expected to perform educational and welfare functions to protect delinquent juveniles interest, into an agency to perform so-called "get-tough" justice functions to protect social order and public security.

The first change I want to point out is the deterioration of the Family Court Social Caseworker system. At its start the Family Court Social Caseworkers were considered to be independent experts responsible for playing a casework function for each specific case and giving a professional advice to a judge. But today through directives issued often by the Family Bureau of Supreme Court they have been completely incorporated in the nationwide bureaucratic hierarchy. Thus caseworkers are now divided into seven hierarchical ranks although there used to be only two. Moreover in 1984 the system was established in which any specific casework and report to a judge must be routinely subject to inspection and advice by his or her superior officer.

The second change is the Introduction of Uniform Intake Criteria for slight cases. The Supreme Court had wanted to change the administration of juvenile procedures since the mid-70s. In 1984 the General Secretariat of Supreme Court convened 40 Family Court judges in charge of juvenile cases all over the state and delivered, at a closed-door session, a draft relating to "the Model Standards for Handling Juvenile Case." The "Model Draft" accounted for four fundamental policies such as 1) importance of the social order and public security, 2) efficient judicial administration, 3) reorganization of caseworker system, and 4) dissolution of the disparities in handling juvenile cases. At the same time it disclosed comprehensive model standards regarding how the procedures should be concretely changed. Among one of the expected changes there was uniform intake criteria.

It suggested each Family Court should change its intake procedures to allow dismissal of certain slighter cases without caseworker's investigation at all or with just perfunctory investigation. Japan Bar Association speculates that half of the cases sent to the Family Court will, as that result, come to an end with little, if any, investigation (casework) by caseworkers. Presently the two leading Family Courts, Tokyo and Osaka, have already aligned themselves with the "Model Draft" of 1984.

IV. Discussions

Now let me give some brief comments about the above-mentioned factual degradation of the core framework set by the Juvenile Law toward "get-tough" policy.

(a) Increase of Delinquency

The changes toward "get-tough" policy are strongly supported on the ground of the increase in juvenile delinquency. As Fig. 2 shows, annual delinquency rate of juveniles cleared by the police increased sharply between 1977 and 1983, but after that period it began going down again. However, it is true that we are still in the range of the highest third peak of delinquency waves witnessed after World War II. Then does this justify the policy
change as the Police Agency and the Supreme Court insist?  My answer is no.

If you look at Fig. 5, you can easily understand how precarious their arguments are. All the heinous and violent offenses have been consistently decreasing during the past ten years, while in contrast only theft and intellectual offenses (all of which are appropriation of "lost" articles) have been increasing. Moreover as Fig. 6 and 7, and Table 1 indicate, all these increased property offenses are just petty ones (in other words the very delin-
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FIG. 5. TRENDS IN JUVENILE PENAL CODE OFFENDERS CLEARED BY THE POLICE, BY TYPE OF OFFENSE (1966–1985)

Source: National Police Agency

Offenses of violence mean assault, bodily injury, intimidation, extortion, and unlawful assembly with dangerous weapon. Heinous offenses mean murder, robbery, arson and rape. Intellectual offenses mean fraud and embezzlement (=appropriation of "lost" articles) such as shoplifting, bicycle or motorbike thefts, and done mainly by juveniles under 15 years old.

Additionally, I would also like to introduce the research, conducted by the Research and Training Institute of Ministry of Justice in 1984, on the ways of thinking or consciousness of delinquent juveniles toward justice, law, parents, and teachers. The results are not being that ways of thinking or consciousness substantially different from those of ordinary children of the same ages. Rather delinquent juveniles show stronger respect for an reliance on social authorities including parents and teachers. Thus it is no wonder that, as pointed out in the White Paper on Crime, most of the lower-aged juveniles arrested by police for
their petty offenses are likely to be through with delinquency by the age of 16.

Accordingly, it is quite clear that no increase of delinquency, nor necessity of public security can provide any excuses for encouraging today's reactionary movement toward juvenile delinquency problems.

(b) What Other Explanations are Possible for the Recent Movements?

Then what other explanations can be possible for the recent tough trends? We might consider explanations such as budget shortage allocated to Family Court, political and media
haranuges for "get tough" and so on. In addition to these, it seems to me that there are two strong underlying and unarticulated social and political purposes for these recent changes.

(c) Social and Political Purposes

The first purpose is related to the question: who should take the responsibility for social and moral education for juveniles in modern Japanese society where the dissolution of traditional social institutions such as family, school, or local community is taking place? The epidemic of school violence and family violence which occurred from the end of the 70s to the beginning of the 80s evidences the diminution of those traditional institutions' authority and their disability to perform their inherently expected social role, that is "wholesome rearing of kids." School has now completely deteriorated into an agent just to select and distribute juveniles solely on the basis of their deviation values on tests to higher school or business community. The ability to send one's children to even a shade more prestigious school and university has become the supreme goal of the ordinary family. Moreover, the number of the families where the father leaves his family due to a transfer to a new post or the family has the dual-income have increased rapidly. The basic social structure of society is undergoing so-called "dual-polarization of the middle-class" which has been progressing with firm steps since the end of 70s. All of these phenomena are considered to show how deeply the "wholesome rearing" function of family and school has disrupted.

| Year | Total | Rate per population | Percent-
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<thead>
<tr>
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</thead>
<tbody>
<tr>
<td></td>
<td>Number</td>
<td></td>
<td>age of juveniles</td>
</tr>
<tr>
<td>1077</td>
<td>154,536</td>
<td>9.4</td>
<td>38.8</td>
</tr>
<tr>
<td>1978</td>
<td>177,719</td>
<td>10.7</td>
<td>42.0</td>
</tr>
<tr>
<td>1979</td>
<td>184,839</td>
<td>10.9</td>
<td>45.1</td>
</tr>
<tr>
<td>1980</td>
<td>219,956</td>
<td>12.8</td>
<td>49.3</td>
</tr>
<tr>
<td>1981</td>
<td>252,808</td>
<td>14.3</td>
<td>52.0</td>
</tr>
<tr>
<td>1982</td>
<td>257,856</td>
<td>14.3</td>
<td>50.8</td>
</tr>
<tr>
<td>1983</td>
<td>261,634</td>
<td>14.1</td>
<td>52.0</td>
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<tr>
<td>1984</td>
<td>248,540</td>
<td>13.2</td>
<td>49.5</td>
</tr>
<tr>
<td>1985</td>
<td>250,132</td>
<td>13.1</td>
<td>51.2</td>
</tr>
<tr>
<td>1986</td>
<td>235,176</td>
<td>12.1</td>
<td>52.3</td>
</tr>
</tbody>
</table>

2. Rate per population for child offenders means the number of child Penal Code offenders cleared per 1,000 children aged 10 through 13; and rate per population for juvenile offenders means the number of juvenile Penal Code offenders cleared per 1,000 juveniles in each age group.

It was in this vacuum area that the police intended to take the social role of “wholesome rearing of kids” in place of family and school. On the other hand, in Japanese society, the reorganization of industrial and social structures toward further economic developments in the nineties has been taking place. In the course of this reorganization, a lot of frictions is anticipated. Accordingly, in order to attain this national purpose as smoothly and efficiently as possible, it is required as an urgent national priority to establish an apparatus to tighten the social norm which now seems to have loosened, and also to dispose, both in advance and ex post facto, of the persons who might deviate from the mainstream of the society and whose number is expected to increase. In consequence, on the one hand, the police are intended to be No. 1 pivotal agent to integrate and coordinate other social institutions and resources in order to tighten social norm and treat still permissible deviants. On the other hand, the Family Court is now intended to be an agent to maintain directly social order and social security rather than to provide juveniles with welfare by punishing certain and selected serious delinquents within the broad meaning.

V. Conclusion

If what I have mentioned above is right, I am afraid that our Japanese society is again returning to the world before World War II where we once victimized juveniles for national purposes. In prewar days prosecutors and police officers (including military police officers) played pivotal roles to control and uniform the nation’s thought. What was that result? A miserable War! Then why can we again accept such a society where the police officers are delegated a strong power to give social and moral education to juveniles, and perhaps also to adults?

The National Police Agency alleges that the purpose or intent of “Juvenile Guidance” is just benign and full of good will, aiming at helping juveniles not to fall into evil ways. It also alleges that the police organization is the most appropriate agent to perform the role of “wholesome rearing” of juveniles, because it has a nation-wide network all over the state and the sufficient number of experts (staffs) to achieve the goal. No matter what the police may allege, however, there is very little doubt that an inherent task of the police lies in the maintenance of social order and social security, and not in the help to the growth and development of juveniles. We can’t but see armours in which police officers are always clad under their benign- and kind-looking appearance of moral preachers.

In Japan we are now enjoying the lowest crime rate in the world and the safest days after World War II. As we have already examined, the recent increase in juvenile delinquency is not of such a kind as we should need to make a fuss about and to mobilize the police power against. It should be rather recognized as a reflection of an increasing number of juveniles who are distorted in the process of their growth and development, that is, as a symptom reflecting the deterioration of the traditional social institutions. If so, what is really questioned and needed now is not such excessive, punitive and unconstitutional responses by police toward juveniles in trouble, but should be how to reorganize social institutions through which we can help and assist the real growth and development of juveniles who happened to fall in trouble just because they are born and brought up in various levels of adversity such as poverty, lack of intellectual and physical ability, or bad rearing cir-
cumstance. For a nation constitutionally dedicated to liberty, democracy, peace and the pursuit of happiness for all its citizens, it will be certainly the worst and the least clever policy-option to vest the power to educate juveniles socially and morally in the hands of police officers.

In 1982 “Tentative Proposal for the Reform of Juvenile Law” was publicized by a governmental committee. It includes not only the provisions which legally justify all the factual deviations I have mentioned, but also the provisions which newly allow prosecutors to participate in the protective procedures, and establishes a new category of criminal offenders aged 17 to 23 named as Criminal Adolescent offenders. Someday when the current trends are finally culminated by the new juvenile law, how will society appear in Japan? Is it too much to say that I can imagine the juveniles producing Toyota, Nissan, or Canon surrounded by police officers with smiles.

REFERENCES

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