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CURRENT PROBLEMS OF JUVENILE DELINQUENCY IN JAPAN*

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I. *The Definition of Juvenile Delinquency*

According to the Juvenile Law of Japan, persons under twenty years of age are classified as juveniles and subject to special procedures. This upper age limit may be higher than in any other country. Under the old Juvenile Law of Japan, which was replaced in 1949, the upper age limit of juveniles was 18. The change was made on the basis of the spirit of the Constitution, which extends child protection.¹ But this change has been continuously challenged by the Ministry of Justice which prefers the system under the old Juvenile Law to that of the present law. A revised plan of the Juvenile Law, designed by the Ministry of Justice in 1966, proposed to set up a new age class called "the Adolescent," ranging from 18 to either 20 or 23 years of age, that would be more likely to be referred to the criminal courts like adult offenders.

While the plan and its supporters claimed that it was not their intention to change the fundamental system of the present Juvenile Law, but only to recommend the adoption of a somewhat more flexible system, many scholars and practitioners—including Family Court judges—took it as a challenge to the fundamental idea of the present law and were severely critical.

I do not intend to discuss this issue here in detail. All I would like to do is point out that there is a conflict of opinion between pro-child-protection and pro-public-security behind any discussions concerning the present Juvenile Law, including the issue of upper age limit, and that we should not leave the total situation of juveniles out of consideration in the discussion of this matter.²

* This paper was presented at 1986 Annual Meeting of the Law and Society Association in Chicago on May 31, 1986. Professor Malcolm Feeley, University of California at Berkeley, recommended me to present it at that meeting. Much thanks are due to following persons for editing my English and giving me useful suggestions: Professors Evelyn P. Stevens, Sheldon L. Messinger, David Liebermann, Charles McClain (UCB) and William J. Maakestad (Western Illinois University College of Business and my office mate as a visiting scholar at UCB).

¹ The 1946 Constitution of Japan, on the one hand, admits that children have the same Fundamental Rights as do adults, but on the other hand, has some provisions concerning child protection such as a provision prohibiting abused treatment of children in employment, a provision concerning the duty of parents or guardians to give a proper education to their children, in order to protect children's rights substantially.

² In Japan, children under twenty years of age are treated differently from adults not only under the Juvenile Law but under other laws. For example, under the Constitution, children under twenty years of age have no right to vote, and under the Civil Law, they must obtain the consent of their legal representative for doing any juristic act, and so on. Before we can reduce the upper age limit of the Juvenile Law, we must consider the rationality of those restrictions on children.

Next, what is delinquency? "Delinquency has something to do with misbehavior, but not all misbehavior is delinquent, even when it might be considered inappropriate behavior for the age of the individual." (Herbert C. Quay, 1965) Then, how can we draw a dividing line between delinquent and non-delinquent misbehavior?

The Japanese Juvenile Law has the following provision;

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 existence of the following reasons;
 - (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.

This provision is supposed to give a definition of delinquency, even though it does not use such a notion. Thus, delinquency as a legal term in Japan, would be defined as a general term covering the conduct of three categories of juveniles: (1) Juvenile offenders, aged 14 through 19 who had committed an offense provided for in the Penal Code or special laws (*Hanzai Shōnen*); (2) Law-Breaking Children, children under 14 years of age (not criminally responsible) who have committed an act in violation of a criminal statute (*Shokuhō Shōnen*); and (3) Pre-delinquent Juveniles, persons under 20 years of age who are likely to commit an offense in the future in view of their characters or surroundings because of the presence of specific factors (*Guhan Shōnen*). The last category is the most problematic, as one can easily see. We can reduce the vagueness in the definition of juvenile delinquency by removing such a "catch-all" clause.

I know some states in the United States dropped their omnibus clauses or removed status offenses from the books after the Supreme Court decision in *In re Gault*. This decision also had a great impact on Japanese scholars and practitioners, and many criticisms were expressed on the *parens patriae* concept. While some of those criticisms have aimed at the wrong target by attacking the principle of juvenile protection itself, rather than the "catch-all" clause, I believe the decision suggested a policy which we should follow in order to protect the minimum right of juveniles to be free from over-intervention by the authorities.

But I also know that after removing the status offenses or the violation of the omnibus clauses from the category of juvenile delinquency, many states have brought them back under another name, such as PINS, MINS, or CHINS. "In a purely technical sense, then, the scope of juvenile delinquency is becoming more limited to crime. But juveniles are still being arrested and detained for the same status offenses as they were many years ago." (Roy Lotz et al., 1985)

Things will be the same or might get worse in Japan. As Table 1 shows, the number of pre-delinquent juveniles investigated by the police is constantly decreasing, contrasting

TABLE I. CHANGE IN NUMBER OF SUSPECTED JUVENILE DELINQUENTS

Year	Juvenile Offenders *1	Law Breaking Children *2	Pre-Delinquent Juvenile
1955	96,956 (100)	24,797 (100)	17,011 (100)
1960	147,899 (153)	48,783 (197)	12,058 (71)
1965	190,864 (197)	44,095 (178)	13,032 (77)
1970	113,295 (117)	34,727 (140)	10,242 (60)
1975	116,782 (120)	35,600 (144)	5,758 (34)
1980	166,073 (171)	53,883 (217)	5,252 (31)
1981	184,902 (190)	67,906 (274)	4,922 (29)
1982	191,930 (198)	65,926 (266)	5,092 (30)
1983	196,783 (203)	64,851 (262)	5,195 (31)

*1, 2 including only non-traffic penal code offenders.

remarkably with the increasing number of the other categories of juvenile delinquents. The decrease seems favourably, at the first glance, to the critics of that category. But, if we consider the possibility of transferring those juveniles who might be classified as pre-delinquent juveniles into other categories such as juvenile offender, one cannot view it as a favourable trend. Moreover, we have very great number of juveniles who are not classified as juvenile delinquents, but subject to police guidance as "Bad Behavior Juveniles" (*Furyō-kōi Shōnen*).³ In 1984, the number of juveniles who were subject to police guidance as such 'pre-pre-delinquent' juveniles was 1,512,777. This figure is 315 times higher than that of juveniles who were under police guidance as pre-delinquent juveniles, and 6 times greater than the number of juveniles who were under police guidance for penal code offenses.

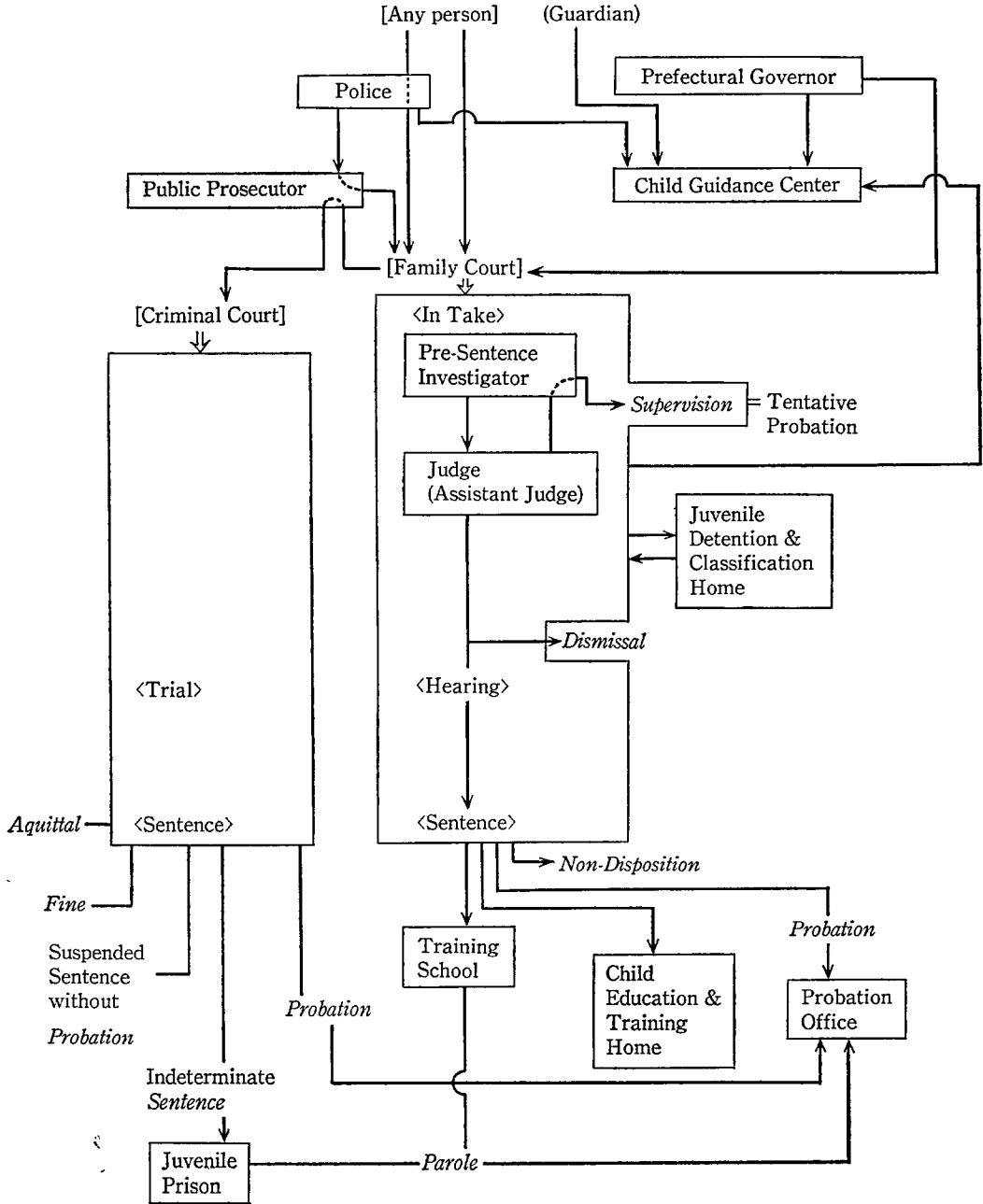
II. Juvenile Justice System in Japan—in Connection with Police Power

Before World War II, juvenile cases were handled by an administrative agency known as the Juvenile Adjudgment Office (*Shōnen-shimpan sho*). But after the War, following the terms of the Constitution which requires the judicial organs to protect fundamental human rights, the structure of the Juvenile Adjudgment Office had to be reorganized into that of the court system. Then the Family Court system was adopted, which took as its model the Juvenile Justice system in the United States. Like the Juvenile Courts in the United States, the Family Courts in Japan are designed to be specialized courts which deal with family affairs as well as juvenile delinquency cases, "exclusively and comprehensively."

Figure 1 shows the flow of juvenile delinquency cases in Japan. The Family Court has jurisdiction over juvenile delinquents who are 14 years of age or more. Formally speaking, all of those cases are sent to the Family Courts. Police officers and public prosecutors have no discretion whether or not to refer the cases. In criminal cases involving

³ According to the police, smoking cigarettes, drinking alcohol, fighting or other misconducts harmful to the moral character of the juvenile's own or of the others are considered to be subject to Juvenile Guidance. Thus, if the police officer finds a boy smoking a cigarette on the street, he can guide him to the police station, and after that, he can decide whether or not to send him to the Family Court as a pre-delinquent juvenile.

FIGURE 1. JUVENILE JUSTICE SYSTEM OF JAPAN



adult suspects, the public prosecutor has discretion over whether to prosecute the case. But in juvenile criminal cases, the public prosecutor must send the case to the Family Court, even if he believes it is more proper to put the juvenile through ordinary criminal proceedings. The Family Court has an "exclusive" right to decide what is proper for the juvenile: ordinary criminal proceedings, protective disposition, or neither. This is one of the most controversial points. Police officers and public prosecutors have attacked such "exclusive" power of the Family Court. But, is it in fact true that the Family Court has "exclusive" power over juvenile delinquency cases?

As mentioned in the former section, the number of juveniles who are subject to police guidance is many times greater than those who are sent to the Family Courts. Police guidance for juveniles, so-called Juvenile Guidance (*Shōnen Hodō*), is not defined by the law. There is no law concerning its procedures. However, it is generally considered to be the most important activity of the juvenile police.⁴ According to the police, it is defined as "the general body of the activities of the juvenile police to find or investigate juvenile delinquents or other problem juveniles, to send them or their cases to the Family Courts, the Child Guidance Centers or other concerned agencies, or to warn, give advice to those juveniles and so on." (So Yoneda, 1982)

Not only police officers but also volunteer citizens who are commissioned by the police as Cooperators for Juvenile Guidance are engaged in the activity of guidance on the street. The police set up a "Special Month" for Juvenile Guidance and strengthen the activity of guidance on the street during long school holidays, such as the summer or winter holidays. As a matter of course, the number of juvenile delinquents and above-mentioned "Bad Behavior" juveniles under police guidance rises during such "Special Months."

According to the police, the purpose of Juvenile Guidance on the street is to find juvenile delinquents or other problem juvenile as early as possible and to "lead those juveniles to good behavior" (*zendō suru*). (The White Paper on Police, 1985) They also say it should be strengthened more and more with the cooperation of the citizens.

One can easily see the function of the juvenile police in Japan. The police intend to perform the function of giving "moral or educational" guidance to juveniles, something which is not normally within the field of crime prevention. But it is questionable whether the police should have such a moralistic or educational function. Some scholars have severely warned against the tendency to expand the power of the juvenile police (Ikuzo Maeno, 1985; Masaaki Fukuda, 1986).

The expansion of the police power of Juvenile Guidance would provide the police with substantial discretion in deciding whether to send juveniles to the Family Courts. This would undermine the power of the courts to make decisions covering the disposition of juvenile cases, and even worse, it would result in excessive intervention in juveniles' daily behavior. This tendency is getting stronger under the guise of having to respond to the increase in juvenile delinquency. In the next section, I shall discuss recent trends in juvenile delinquency.

⁴ There is no separate police force called "the juvenile police," but only a section of the police department which deals with juvenile delinquency. The police have called this section "the juvenile police" since 1949 and provided it with special mission, so I am using this name in this paper.

III. *A View on Trends in Juvenile Delinquency*

As Fig 2 shows, the annual rate of juveniles reported to the police for major penal code offenses has been steadily increasing since 1974, while the corresponding rate for adults has been constantly decreasing since 1951. It is said that we are presently witnessing the third peak in juvenile delinquency statistics (the first was in 1951 and the second in 1964). Some of the most notable aspects of recent juvenile criminality are considered to be:

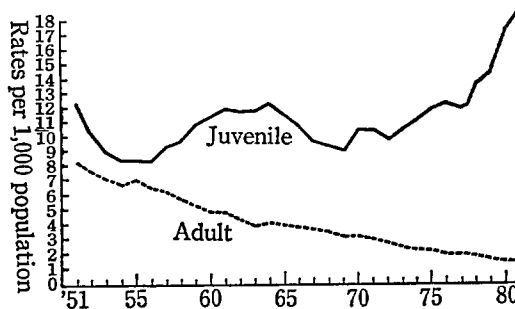
- 1) the increase of offenses "as play," such as shoplifting, theft or misappropriation of bicycles;
- 2) the increase of offenses committed by lower-aged juveniles, especially junior high school students;
- 3) the increase in girl delinquents;
- 4) a rise in the problem of latent delinquency such as violence by juveniles in the family or school violence;

[In connection with the first and second points, it is also said that juvenile delinquency is getting more popular and routine (Takeo Mori and Hideo Goko, 1982).]

There are two opposing responses to the recent trends in juvenile delinquency: a pessimistic view and an optimistic view, so to speak. From the pessimistic viewpoint, the increase in juvenile delinquency, the increase in actual offenses committed by lower-aged juveniles, and the popularization of juvenile delinquency are considered serious. So Yoneda, Deputy Chief of the Department of Juveniles in the National Police Office, said, "we should recognize the seriousness of the recent situation of juvenile delinquency which is characterized by an increase in SHOHATSU-GATA HIKO, a kind of delinquency which is likely to be committed in the early stage of ages" (So Yoneda, 1982).

In contrast, the optimistic view points out that the main factor accounting for the increase in juvenile delinquency statistics is the increase in petty offenses such as shoplifting and theft of bicycles, not of serious offenses. Proponents of this view also assume that most juvenile delinquents have no serious problems either in their families or in their abilities, and that their delinquencies are mostly temporary ones coming from "adolescent crises," not persistent ones. Takeo Mori, who is one of the representatives of this view, claims

FIGURE 2. TRENDS IN ANNUAL RATES OF PERSONS REPORTED TO THE POLICE FOR MAJOR PENAL CODE OFFENSES (1951-1981)



current juvenile delinquency should be counted among other “adolescent crisis symptoms” such as youth suicide, school refusal, family violence or vandalism (Takeo Mori and Hideo Goko, 1982).

Figures 3 and 4 support the optimistic view that the increase of the number of juvenile

FIGURE 3. TRENDS IN PENAL CODE JUVENILE OFFENDERS UNDER POLICE GUIDANCE BY CRIME CATEGORIES, 1966-1980

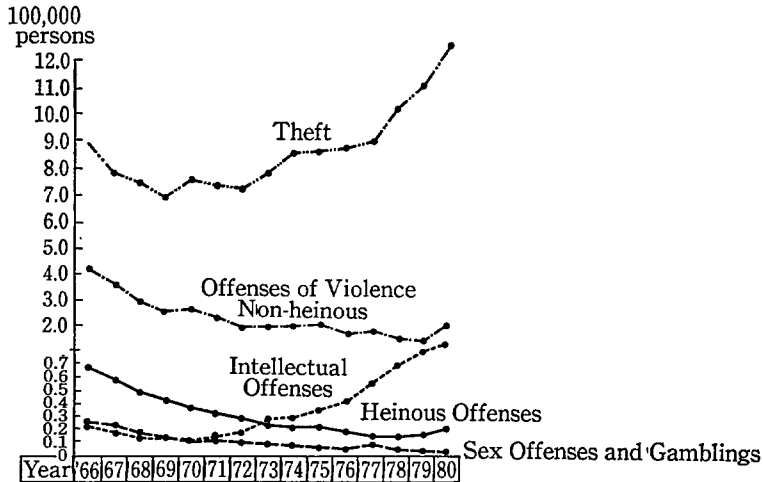
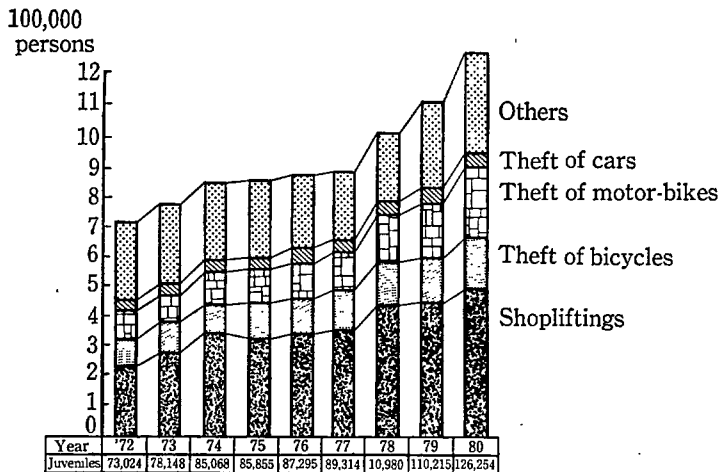


FIGURE 4. CHANGES IN PATTERNS OF JUVENILE THEFTS INVESTIGATED BY THE POLICE, 1972-1980



Source: Mori and Goko, 1982

Non-heinous Offenses of Violence=Assault, Bodily Injury, Intimidation, Extortion and Unlawful Assembly with Dangerous Weapon

Heinous Offenses=Murder, Robbery, Arson and Rape

Intellectual Offenses=Fraud and Embezzlement

offenses has been caused by the increase in petty theft. As to the characters of juvenile delinquents, the 1984 White Paper on Crime, which basically takes the pessimistic view, admits that lower-aged juveniles arrested by the police for juvenile delinquency are likely to cease their delinquency after the age of 16, and thus it may be concluded that persons who have committed some delinquency in their childhood do not always have a tendency to commit crimes after growing up.

Research on the attitude of juvenile delinquents has also shown that their sense of justice is not substantially different from that of non-delinquent children of the same age and that they have feelings of reliance upon their parents or teachers that are stronger than those of non-delinquent children (Special Research of the Research and Training Institute at the Ministry of Justice, 1983).

These facts seem to support the optimistic view that the problem of juvenile delinquency is not serious in today's Japan. Nevertheless, according to research on public perceptions of juvenile delinquency, a majority of the public adopts the pessimistic view (Haruo Nishimura, 1982). This research shows, by professional categories, opinions concerning juvenile delinquency. The current situation of juvenile delinquency is viewed most serious by probation officers (82%), followed by junior high school teachers (81%), police officers (80%), senior high school teachers (71%) and correction staff (65%). Concern by senior high school students is the lowest (35%), followed by that of college students (50%). The concern by non-professional persons is the same as that of correction staff. It is not so surprising that probation officers and police officers, who deal with juvenile delinquents on a daily basis, view the current situation as more serious than do other people. However, it may seem strange that junior high school teachers view it as more serious than do police officers. This might reflect the situation of junior high schools at the time the research was conducted, a time when school violence was felt to be the worst headache by teachers, especially in junior high schools.⁵

The police are strengthening activities in prevention of juvenile delinquency called the *Shōnen-hikō Sōgō Taisaku*, Comprehensive Plan for Controlling Juvenile Delinquency, which has been encouraged by the results of public opinion polls. One of the ways of realizing this plan is to strengthen Juvenile Guidance on the street, as mentioned in the former section. But the public perceptions of juvenile delinquency, which the police claim support them, are greatly influenced by the experience and situation of each person, as mentioned

⁵ The following table shows, the number of incidents of school violence cleared by the police was highest in 1981.

TABLE 2. NUMBER OF VIOLENT INCIDENTS AT SCHOOL CLEARED BY THE POLICE
(1979-1983)

Year	Number of cases	Number of victims	Victims per case	Persons arrested/Guided			
				Total	Persons per case	Junior high students	Senior high students
1979	1,208	3,174	2.63	6,719	5.56	5,141	1,578
1980	1,558	4,827	3.10	9,058	5.81	7,108	1,950
1981	2,085	4,444	2.13	10,468	5.02	8,862	1,606
1982	1,961	4,267	2.18	8,904	4.54	7,952	952
1983	2,125	4,265	2.01	8,751	4.12	8,227	524

Source: Safety Division, National Police Agency.

before. Moreover, we should not neglect the influence of the mass media on public perceptions of crime and delinquency. The mass media are always looking for a target. Nothing is more suitable as a target than the crime and delinquency issue. We have seen almost every day articles or comments concerning juvenile delinquency in the newspapers for the past ten years. We have heard almost every day voices on the television or radio which emphasize the seriousness of juvenile violence in families or schools. Most recently, their target has been moving from juvenile delinquency in general, or violence in families or schools, to bullying in schools.

I do not mean to suggest that problems such as family violence, school violence or bullying in schools are nothing but illusions created by the mass media. I believe that these are in fact serious problems in Japanese society.⁶ But I am afraid that we cannot find a solution of those problems by treating them as delinquency.

I stated the increase of offenses "as play" has accounted for one of the notable aspects of recent juvenile criminality. But, if we view the other side of this coin, we find another picture. Some misconduct which would formerly have been accepted as child's play in the society has become more disturbing to adults, so that it is now defined and treated as juvenile delinquency. But, as John Muncie pointed out, "the stability of society would be no more threatened if we did not give youth so much privileged attention." (John Muncie, 1984) His claim that the real problem today is "not kids in trouble, but trouble in kids," is even more fitting in modern Japan than Britain.

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⁶ As some American newspapers have reported, the issue of bullying, known as "ijime" in Japan, is causing headaches in schools. According to the police Survey in 1984, 531 cases were handled by the police as violence caused by "ijime," resulting in 1920 students arrests. Seven victims of bullying either murdered or attempted to murder their assailants. 79.5% of the arrestees were junior high school students, followed by senior high school students (18.4%) and elementary school students (2.1%). Of the total, 33.1% were girls; this figure is higher than the one for girls arrested for major penal code offenses.

A 1985 White Paper on Crime, for the first time, mentioned the "ijime" problem as a new kind of juvenile delinquency and a matter of social concern, in place of school violence against teachers. It stated:

" . . . The existence of so-called 'ijimekko (bully)' is not new, but we are anxious about the recent tendency that ordinary juveniles continue ignoring or bullying some specified classmates for a long time. Moreover, not a small number of acts of violent revenge against bullies or suicides by victims are showing up. This situation urges us to take some effective reaction to this problem."

As the Paper mentioned, the problem of bullying in school is by no means new. Not only in schools but everywhere in Japan, we can find the history of bullying; in the Japanese army, the history of bullying of the rookies (*shonen-hei ijime*); in the traditional family, the history of bullying of the daughters-in-law (*yome ibili*); in the village, the history of ostracism (*mura hachibu*) and so on. I would say bullying has a deep root in Japanese tradition. Bullying in schools today is a mixed product of this tradition which has accepted bullying in daily life, and of post war industrialization which has transformed the education system into a very highly competitive one.

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