

講 演

# History, Aim, and Structure of the Juvenile Justice System in Japan\*

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## Abstract

In Japan, the age of adulthood is set at 20 years by the Civil Code, the Juvenile Act, and other laws. However, currently, the Japanese government is planning to lower this age to 18. Already, in the Public Offices Election Act, the adult age was lowered to 18 in 2015, but, as for the Juvenile Act, this “adult age” reform faces opposition from both academics and practitioners, because the Japanese juvenile justice system is thought to have worked well enough so far. Therefore, these academics and practitioners believe that the adult criminal procedure is inappropriate for youth aged 18 to 19. In this paper, the history, aim, and structure of the Japanese juvenile justice system are reviewed. We then consider recent problems the system has faced. The paper discusses, from a legal aspect, the way youth who are generally susceptible and impressionable should be treated in the criminal and/or juvenile justice system.

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## I Introduction

### 1. Background

In Japan, the age of adulthood is set at 20 years by the Civil Code, the Juvenile Act, and other laws, although the Japanese government is currently planning to lower this age to 18. In fact, in 2015, in the Public Offices Election Act, the adult age was already lowered to 18. However, when it comes to the Juvenile Act, this “adult age” reform faces opposition from both academics and practitioners, because the Japanese juvenile justice system is thought to have worked well enough so far: These academics and practitioners believe that the criminal procedure for adults is inappropriate for youth aged 18 to 19. As the background for this “adult age” reform, the government cites global trends: Most countries have 18 as the age for adulthood.

In this paper, we discuss from a legal perspective how youth, who are usually susceptible and impressionable, should be treated in the criminal and/or juvenile justice system.

### 2. Composition of this Paper

In this paper, we will first cover the history of the development of the juvenile justice system in Japan. We would then like to consider the aims and basic philosophy underlying Japanese juvenile law. Next, the structure of the Japanese juvenile justice system will be considered. This section includes the types of juvenile delinquents and juvenile-specific procedures in Japanese juvenile law. Finally, we will briefly look at the recent problems that the Japanese juvenile justice system has been facing.

This re-examination of the Japanese juvenile justice system will provide us

with some suggestions, perhaps hinting at the way that juvenile law should be structured.

## II History

First, we will cover the history of the Japanese juvenile justice system.

### 1. Punishment of Juvenile Offenders under the Feudal System

In the Edo period (1603–1868), under the feudal system of the Tokugawa government, the legal system was based on traditional legal thought derived from indigenous law and Chinese law. This indigenous law is said to have had a close connection with *Shinto* (the traditional polytheistic religion of Japan) and, historically, Chinese law also contributed to Japanese legal thought.

Under the *Kujikata-Osadamegaki* (the code of the Tokugawa government, or, literally, the book of rules for public officials) that Shogun Yoshimune Tokugawa established, special lenient punishments were imposed on minor offenders. At the time, minors were considered to be those under 15 years of age. For example, in place of the death penalty, the authorities entrusted a minor offender to his/her relatives until he/she turned 15 years old, and then he/she was exiled to an island.

### 2. Introduction of Western Laws and Treatment of Juvenile Offenders

After the Meiji Restoration, which brought about the collapse of the Tokugawa government, the new government endeavored to modernize, or westernize, various social systems in Japan, including politics, economy, education, and the law. Therefore, in the Meiji period (1868–1912), laws that were imported from European countries were introduced in all fields in Japan.

As I mentioned in a previous article, a “multi-layered” legal culture can be observed in Japan (Konishi 2013). Historically, Japanese legal systems were developed with the influence of indigenous law, Chinese law, French law, German law, American law, and laws from other countries. A variety of elements of these laws have accumulated in Japanese law. Thus, the Japanese legal culture includes diversity, or hybridity, as one of its characteristics.

To modernize criminal justice, a penal code based on French law was first proclaimed in 1880. A new, more modern penal code based on German law was enacted in 1907.

At first, during the Meiji period, one compartment of the prison was utilized for the treatment of juvenile delinquents. More specifically, they were juvenile ex-inmates and juveniles who were not criminally responsible because of their age. Since this treatment was conducted in prisons that also housed adult inmates, the results were not positive.

At the same time, private reformatories were gradually established all over Japan. The sharp increase in juvenile delinquency as a social problem at the time led to this movement. For example, Kousuke Tomeoka, a social welfare entrepreneur and reformer, studied in the U.S. under the tutelage of Zebulon Brockway, a penologist and prison reformer, at the Elmira Reformatory in New York. After returning to Japan, in 1899, Tomeoka opened a private reformatory called the “Family School” (*Katei-Gakkou*) in Tokyo. The next year, in 1900, the Reformation Act was enacted, and prefectures became obliged to establish public reformatories.

### 3. First Enactment of a Juvenile Law

The Illinois Juvenile Court Act was enacted in 1899 and created the first juvenile court in the U.S.

During the Taisho period (1912-1926), its good reputation also spread in Japan. As a result, the Diet enacted the Juvenile Act of 1922, which was influenced by the American juvenile justice system.

Unlike the American juvenile justice system, however, in Japan, Juvenile Tribunals conducted hearings for juvenile delinquents. These Juvenile Tribunals were not a branch of the judiciary but an administrative body that was part of the Ministry of Justice.

Under the Juvenile Act of 1922, a public prosecutor had broad discretion over the disposition of juvenile delinquents. Only when a public prosecutor did not prosecute a juvenile delinquent's case and referred it to a Juvenile Tribunal could an administrative judge of this tribunal take on the case.

In this law, the age of adulthood was set as 18 years, based on the Civil Code.

Concurrently with the legislation of the Juvenile Act, the Correctional School Act was also enacted in 1922. As one option for protective measures, an administrative judge could commit a juvenile delinquent to this Correctional School (*Kyousei-In*).

#### 4. Establishment of the Current Juvenile Act

In the Showa period (1926-1989), after World War II, the existing Juvenile Act was thoroughly revised. This Juvenile Act of 1948 was developed through negotiations between the Japanese government, especially the Ministry of Justice, and the General Headquarters of the Supreme Commander for Allied Powers (GHQ-SCAP). Therefore, this new juvenile law more strongly reflected the features of the American juvenile justice system.

Under this law, juvenile problems were incorporated into the jurisdiction of the Family Court, which is a branch of the judiciary. Only when a Family Court judge decided to refer a juvenile crime case to a public prosecutor

could this public prosecutor prosecute said juvenile for his/her crime.

Moreover, in this Act, the age of adulthood was raised from 18 to 20. The practitioners and government officials at that time emphasized the beneficial effects of the juvenile justice system on the resocialization of delinquent youth.

At the same time as this legislation, the Juvenile Training School Act became a successor to the Correctional School Act.

On the other hand, private and public reformatories continued to operate for those juvenile delinquents who were younger or who had committed petty offenses, although they changed their legal names from Reformatories (*Kanka-In*) to Juvenile Reform Schools (*Shounen-Kyougou-In*). After World War II, in the Child Welfare Act of 1947, Juvenile Reform Schools were renamed Reform Schools (*Kyougou-In*) and positioned as a type of child welfare institution. Additionally, in this Act, the Child Guidance Center was defined as the core local agency to manage cases involving a child and his/her family, which included delinquent child cases.

For the aforementioned reasons, two systems in which juvenile delinquents were treated were established in Japan: the juvenile justice system and child welfare system. The former is based on the Juvenile Act and the latter on the Child Welfare Act.

In rare cases, the criminal justice system is used for juvenile criminals.

## 5. Major Revisions of the Juvenile Act

For over 50 years, even after entering the Heisei period (1989–2019), the Juvenile Act of 1948 was not drastically revised. However, since 2000, there have been waves of amendments to this Act.

A revision of the juvenile law in 2000 broadened the possibility for the referral of a juvenile crime case to a public prosecutor. This revised law

permitted a public prosecutor to attend a juvenile hearing of a juvenile crime case and also contained articles for the support of a juvenile crime's victim and his/her family.

Afterward, the government and Diet continuously created amendments to the Juvenile Act of 1948. In 2006, the procedure for juvenile offenders under 14 years old was substantially altered. Additionally, in 2007, the range of support measures for a juvenile crime's victim and his/her family was broadened. In this amendment to the Juvenile Act, the victim's attendance at the juvenile hearing of a case involving him/her was acknowledged. Moreover, in 2014, an amendment to the juvenile law broadened the range of cases in which a public prosecutor can attend a juvenile hearing. Currently, as I mentioned earlier, the Japanese government is attempting to pass a new amendment to the Juvenile Act of 1948.

Through these waves of amendments to the existing juvenile law, its basic structure has been significantly changed.

### III Aims

Next, we will consider the aims and basic philosophy of Japanese juvenile law.

#### 1. "Sound Development" of Juveniles

In Article 1 of the Juvenile Act, the aim of this law is stated as follows:

The aim of this Act is to subject juvenile delinquents to protective measures to correct their personality traits and modify their environment, and to implement special measures for juvenile criminal cases, in the hope of fostering juveniles' sound development.

Thus, in Japanese juvenile law, the “sound development” of juveniles is the ultimate aim. This ultimate goal is common to other laws related to children and juveniles. Therefore, we can observe that juvenile law collaborates with child welfare law (Child Welfare Act of 1947), as well as education law (Basic Act on Education of 2006) in order to avoid exacerbation of the problematic behaviors of juveniles. In the Japanese juvenile justice system, the Family Court imposes a protective measure on a juvenile to protect and educate him/her, not to punish him/her.

## 2. *Parens Patriae* Doctrine

Originally, the Japanese juvenile justice system was considered to be based on the *Parens Patriae* (Country as Parent) doctrine. This doctrine means that, if biological parents cannot protect and educate their child, the country should do so in their stead. Hence, the country behaves as a child’s parent would. This doctrine was born under the equity principle in medieval England. Afterward, this principle was utilized in U.S. courts. The case decision of *Ex parte Crouse* (1838) in the Supreme Court of Pennsylvania, in particular, is well known as the first case in which the country’s intervention in a family with a juvenile delinquent was justified by the notion of *Parens Patriae*.

However, after the decisions of the *In re Gault* case (1967) and other cases in the U.S. Supreme Court, which emphasized due process in the case of juvenile delinquents, the *Parens Patriae* doctrine began to lose support among academics and practitioners in Japan. Among others, some academics in the field of juvenile law emphasized juveniles’ autonomy and right to self-determination and criticized the use of the *Parens Patriae* doctrine to justify the country’s intervention.



### 3. Paternalism

Thus, in Japan, the country's intervention in delinquent behavior has recently been considered to be justified by Paternalism. According to this legal principle, a country can intervene in a juvenile's behavior only if he/she harms the rights or interests of him/herself.

This principle is clearly distinguished from the Harm Principle, as well as Moralism. The Harm Principle was suggested by the English social philosopher, John Stuart Mill, in his book *On Liberty* (1859/2005). According to this principle, only when one person harms another person's rights or interests can his/her rights and freedom be restricted by the country. However, this principle is not sufficient to protect a child who still cannot behave based on rational judgment. On the other hand, Moralism, by which the country's intervention in a person's behavior is justified in order to protect social moral order, is likely to permit excessive intervention in the behaviors of individuals. Thus, this principle is excluded from the justifications of juvenile law in Japan.

## IV Structure

We will now take a look at the basic structure of the Japanese juvenile justice system.

### 1. Types of Juvenile Delinquents in the Juvenile Act

There are three types of juvenile delinquents under the Juvenile Act of 1948.

The first type of delinquent is a juvenile who commits a crime at age 14 years or over ("juvenile offender of 14 years or over").

The second type is a juvenile who violates punitive laws and is under 14

years of age (“juvenile offender under 14 years of age”). In the Japanese Penal Code, age 14 or over is the age of criminal responsibility. This type of delinquent needs to be initially managed by a Child Guidance Center. Only when the director of this center decides to send a juvenile offender or pre-delinquent juvenile under 14 to a Family Court can this court take on his/her case.

The third type of delinquent in Japanese juvenile law is the “pre-delinquent juvenile.” This juvenile does not commit a crime but is at risk of doing so. His/her behavior includes, for example, running away from home or having a relationship with gang members. In Japanese juvenile law, based on Paternalism, the country intervenes in such behavior, and the “pre-delinquent juvenile” is subject to a juvenile hearing in a Family Court. However, since the 1970s, when the courts narrowed the range of application of the concept of “pre-delinquency,” the number of “pre-delinquent juvenile” cases sharply decreased (Konishi 2005). The U.S. Supreme Court “due process” decisions mentioned above have greatly influenced the attitude of these courts toward the interpretation of “pre-delinquency.”

## 2. Juvenile Protective Procedures

How are these types of juvenile delinquents treated according to the “juvenile protective procedures” in Japan?

At first, when a police officer finds a juvenile offender aged 14 years or over, the officer must refer his/her case to a public prosecutor (in cases corresponding to punishment by the death penalty or imprisonment) or a Family Court (in cases corresponding to punishment by a fine or penal detention) after the investigation. After receiving this criminal case from the police and investigating it, the public prosecutor must refer it to a Family Court. A public prosecutor does not have exclusive authority to prosecute a juvenile

criminal case. Additionally, criminal investigations of juvenile criminal cases are basically grounded in the Code of Criminal Procedure, as is true for adult cases.

Therefore, all criminal cases involving juvenile offenders of 14 years of age and over are required to be sent to a Family Court. Family Court judges decide whether these juvenile offenders should be prosecuted by public prosecutors. In the U.S., this process is referred to as judicial waiver (Myers 2003: 388-389).

On the other hand, for cases of juvenile offenders and pre-delinquent juveniles under 14 years of age, as I noted above, initially, a Child Guidance Center must handle these cases. If its director decides to refer the case to a Family Court, the case is referred to that court and handled by it.

The Family Court is a branch of the judiciary. It is an independent and special court that handles juvenile cases, as well as domestic relations cases, including divorce, property division, and parental authority. Thus, it is not a criminal court.

In Japan, since the privacy of a juvenile delinquent and his/her family are highly protected, the public cannot attend any juvenile hearing in the Family Court. Of course, when a juvenile is prosecuted on the basis of the Family Court's decision, the public can observe his/her trial in the criminal court, just like an adult offender's trial.

Although those present at a juvenile hearing are usually limited to the juvenile and his/her custodian such as a parent, an attendant such as an attorney-at-law, a judge, and other staff members of a Family Court, the public prosecutor is permitted in a limited way to attend, based on an amendment to the juvenile law in 2000. Additionally, when a Family Court allows for such attendance, a court-assigned attorney-at-law must also attend the same juvenile hearing as an attendant. Moreover, as I noted

earlier, the attendance of a crime victim and his/her family members at a juvenile hearing have been permitted by an amendment of the juvenile law in 2007. In this way, the range of those present at a juvenile hearing has been gradually extended in Japan.

As one process of the juvenile protective procedure, a Family Court Probation Officer makes a social investigation into the background of delinquency (and especially its environmental factors) of a juvenile case. In addition, a Technical Official of Psychology at a Juvenile Classification Home also probes into the background of delinquency (and especially its personality factors) of the juvenile case and arranges a classification of the traits of a given juvenile delinquent.

During this social investigation and classification process, a Family Court judge can determine whether to refer a juvenile crime case to a public prosecutor. If the judge has done so, the public prosecutor is required to prosecute the case. In addition, a Family Court judge can also determine whether to refer a juvenile case to the governor of a prefecture or the director of the Child Guidance Center. In this situation, the Child Guidance Center usually handles the case.

At the end of the juvenile protective procedure, a Family Court judge can impose one of several protective measures for a juvenile delinquent. Three types of protective measures are provided for in the Juvenile Act of 1948 (Article 24, Paragraph 1) : (1) probation, (2) commitment to a Children's Self-Reliance Support Facility or Children's Nursing Home, and (3) commitment to a Juvenile Training School.

Probation is conducted by an (official) probation officer and volunteer probation officer. These officers belong to the Ministry of Justice. In the process of probation, they coach and supervise a delinquent juvenile, as well as guide and support him/her.

A Family Court judge may also commit a juvenile delinquent to a Children's Self-Reliance Support Facility or Children's Nursing Home, which are child welfare institutions under the supervision of the Ministry of Health, Labour and Welfare. The Children's Self-Reliance Support Facilities are successors to the Reform Schools mentioned above.

The commitment to a Juvenile Training School is also a protective measure option. A Juvenile Training School is a correctional institution belonging to the Ministry of Justice, but it is not a prison.

Only after a juvenile offender has been prosecuted based on a Family Court decision can a criminal court acquire jurisdiction over the case. In the criminal court, a juvenile offender is basically treated just like an adult offender. If the juvenile offender received a prison sentence without suspension of the execution of a sentence, he/she would be committed to a juvenile prison. There are six juvenile prisons in Japan, but very few juvenile prisoners stay there; there were only 30 new juvenile prisoners in 2016 (Research and Training Institute, Ministry of Justice 2017: 133).

## V Recent Problems

Finally, we will consider recent problems that the Japanese juvenile justice system has faced.

Fortunately, the number of juvenile cases is sharply decreasing: Currently, the system is facing the fewest cases since World War II. The number of juveniles cleared for Penal Code offenses was 317,438 in its peak year—1983 (Research and Training Institute, Ministry of Justice 2017: 92), yet, in 2016, this number fell to 56,712. As a result, there are often no juveniles in some of the Juvenile Classification Homes. Of course, the number of people of juvenile age is itself decreasing in Japan. Even so, the ratio of the number of

delinquent juveniles to the juvenile population is decreasing. In his book *Disappearance of the "Juvenile Delinquent,"* Japanese sociologist Takayoshi Doi points out that the character of youth has changed (Doi 2003). His research shows that recent juveniles seldom exhibit anti-social behaviors.

In contrast, elderly people's crimes are increasing in Japan. Some elderly people have committed violence against staff members in hospitals or train stations, and others shoplift at supermarkets. There are many elderly female inmates in female prisons who have committed shoplifting. In Japan, the population of elderly people is sharply increasing. In addition, it is said that the rate of lonely old people is also increasing. They live alone and have no relationship with the community. This environment raises the possibility that they could commit an offense.

Regarding juvenile delinquents, as previously mentioned, we can find waves of amendments to the existing juvenile law in Japan. Criminologist Jun Ayukawa noted that "salient case politics" have encouraged the government to pass these amendments. This notion means that "an organization, group, or individual tries to extend its or his/her own interests through the use of a case that has been salient, socially spotlighted, and not necessarily typical or representative" (Ayukawa 2005: 28). For example, in 1997, a juvenile murder case occurred in Kobe City of Hyogo Prefecture. In this case, a then 14-year-old junior high school student killed two and injured three elementary school children. After the detection of these crimes, the media constantly reported on this case, which compounded the public's anxiety concerning crimes by juveniles, and even the existence of juveniles themselves, among the Japanese people. Moreover, at that time, the victims' movement was becoming active, and its groups criticized the existing juvenile justice system, which they regarded as too lenient, by citing the Kobe case and others. As a result, in 2000, the Diet drastically amended juvenile law to

satisfy the demands of public opinion and the victims' movement by toughening the law. In this amendment, the age at which a juvenile can be prosecuted was lowered from 16 to 14. However, since its enactment, no prison sentence has been executed for 14- or 15-year-olds.

The current movement of the amendment of the Juvenile Act, in which the age of adulthood is planned to be lowered, also follows this trend. Some researchers have noted that this amendment would lead to a crisis of the juvenile justice system in Japan (Yokoyama 2017). Based on their opinions, we cannot identify any pressing need for the new amendment to the Juvenile Act of 1948. On the contrary, since it has been said that the end of adolescence in our time has been gradually receding in terms of mental development and financial independence, and our average life expectancy has also been extended, it might be necessary for us to raise the adult age, instead.

## VI Conclusion

Based on this review of juvenile law, it would be necessary in the future as well to maintain the ultimate goal of Japanese juvenile law—the “sound development” of juveniles—and the juvenile justice system built on this aim. Continuously, while taking social changes into consideration, we will have to explore the criminal and/or juvenile justice system that serves the best interests of juveniles.

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