THE DEBATE ABOUT THE REFORM OF THE JUVENILE LAW IN JAPAN

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1. *The Basic Characteristics of the Japanese Juvenile Law Before the Reform*

Before depicting the debate about the reform of the Juvenile Law and its outcome, a short description of the basic characteristics of the Japanese juvenile justice system is appropriate (for general introductions see Kühne/Miyazawa 1975; Kurata/Hamai 1996; Salzberg 2001; Sawanobori 2001).

According to that law, juveniles (*shônen*) are defined as persons under twenty years of age (Art. 2 *Shônenhô*, Juvenile Law, for the English translation see Nakane 1968).[1] Compared to adult offenders, juvenile suspects are subject to a different set of procedural rules and sanctions. This system was laid down after the Second World War during the general law reform initiated by the U.S. occupational administration. Consequently, the new Juvenile Law was drafted along the model of the "Standard Juvenile Court Act" from the U.S. On the one hand, it introduced a specialized Family Court, which was intended to operate without interference and participation of public prosecutors that have a dominant role in ordinary criminal procedures. On the other hand, the Juvenile Law was deeply rooted in the rehabilitative philosophy of the time (Art. 1 Juvenile Law).

As one can see from Figures 1 and 2, the Family Court is like a clearing center for all cases involving juvenile offenders. If the police, public prosecutor or any other institution gets to know of a juvenile between 14 and 20 year of age who has presumably committed an offence, they have to send the case to the Family Court (see Murai 1988).

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[1] A different translation (including all amendments up to 1997) is available at: www.asem.org/Documents/Japan/Juvenile.htm (last visit: May 23, 2001).

Figure 1: The Juvenile Justice System of Japan

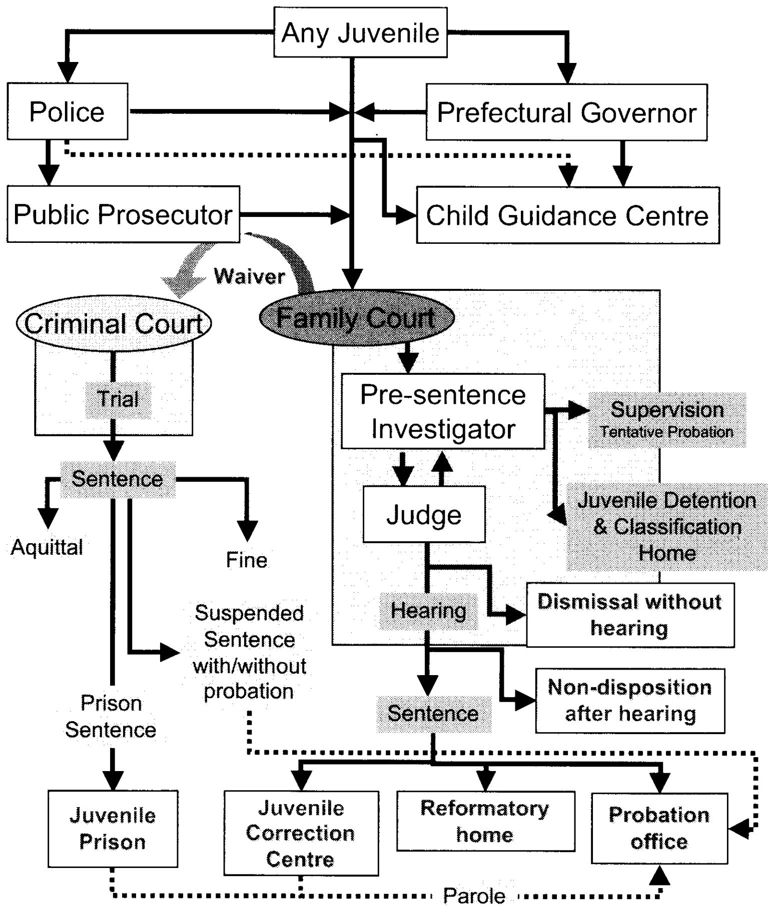
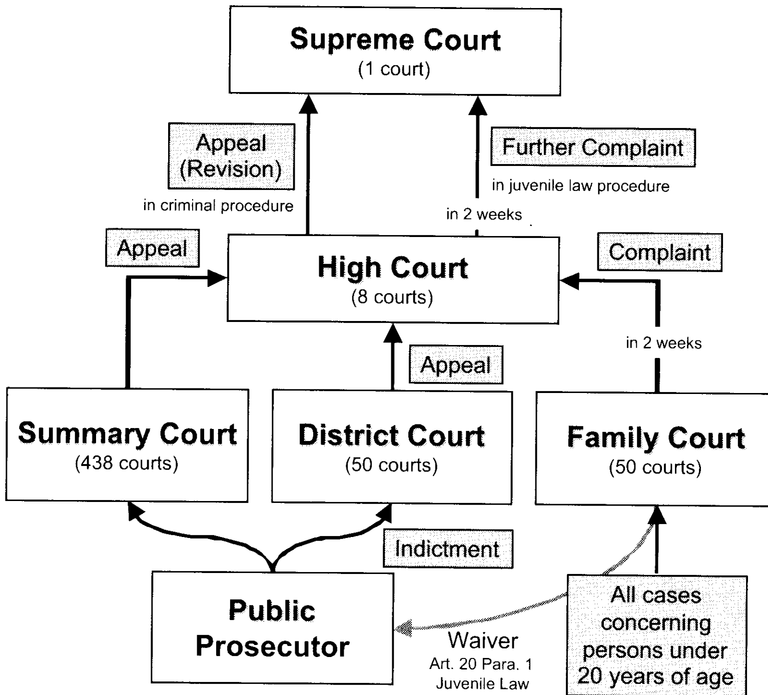


Figure 2: The Appeal System in Juvenile Justice Cases



Source: Lenz/Schwarzenegger 2000: 171

For juveniles under 14 years of age, the Family Court can also determine protective measures if only a prefectural governor or the chief of a child guidance center refers them to the court (see Art. 3 Para. 2 Juvenile Law). Additionally, the Family Court even deals with pre-delinquent juveniles, that is, juveniles who are prone to commit an offence, for example, because they "associate with a person of criminal propensity or of immoral character or frequent places of evil reputation" (see Art. 3 Para. 1 Item Juvenile Law; for the empirical significance see Metzler 1999: 33).

Due to the rehabilitative philosophy of the Japanese Juvenile Law, the Family Court, by means of a ruling, can take only one of three protective measures with respect to a case (Art. 24 Juvenile Law, see Table 1).

Table 1: The Protective Measures of the Juvenile Law

Juvenile correction center		Reformatory home	Probation
Orientation about 1 month	- physical check-up - orientation - various investigations	- guidance counseling - academic education - vocational training	Most often used protective measure
Education 8 months to 1 1/2 years	- guidance counseling - vocational training - academic education - physical education - special activity		
Preparation for discharge 1 month	- career counseling - extramural activity		
ca. 5,000 measures/year		ca. 270 measures/ year	ca. 52,000 measures/ year

Source: For the data see Table 2.

These are:

1. To place the juvenile under the probationary supervision of the probation office (*hogo kansatsu*, see Hamai/Villé 1995:89);
2. To commit the juvenile to a reformatory home, also known as child education and training home/home for dependent children (*jidô jiritsu shien shisetsu*; *jidô yôgo shisetsu* [literal translations: Child self-support or child protection institution])
3. To commit the juvenile to a juvenile correction center, also known as juvenile training school (*shônen'in*).

Protective measures are all aimed at correction and education. Though life in juvenile correction centers is rigidly regulated, punishing the young offenders is not the aim in these institutions.

Serious juvenile offenders are normally sent to a juvenile correction center of which four types exist (Art. 2 *Shônen'inhô*, Juvenile Correction Center Law, for an English translation see Eibun-Hôreisha 1990; for its implementation see Hômu Sôgô Kenkyûsho 1998: 243):

1. primary correction center (14- to 16-year-olds);
2. middle correction center (16- to 19-year-olds);
3. advanced correction center (16- to 23-year-olds with advanced delinquent careers);
4. medical correction center (up to 26 years with serious mental or physical problems).

The length of stay in the correctional center is no longer determined. In July 1997, the Justice Ministry passed a notice, which removed the three-year time limit at correctional centers. According to the Juvenile Correction Center Law (Art. 11), the inmate normally has to be released upon coming of age (that is 20 years old). In special cases the measure can be extended for 3 years, and for 6 years in case of mental illness. Between 1995 and 2000 the annual number of newly committed inmates has increased by 58% (up from 3,828 to 6,052 persons). This is mainly due to an increase in male inmates (up from 3,719 to 5,448). In the year 2000 the crimes most frequently leading to detention in a juvenile correction center were (Hômushô 2001):

1. Theft (29.8%)
2. Assault (14.6%)
3. Threatening behavior (10.9%)
4. Robbery (9.8%)
5. Traffic offences (9.5%)

Besides, the Family Court can, again by means of a ruling, dismiss the case without imposing a protective measure. This can be done without holding a hearing or after completion of a formal hearing (Art. 23 Para. 2 Juvenile Law). In other cases the Family Court may come to the conclusion that only measures under the Child Welfare Law are necessary and refer them to the competent prefectural governor or head of the child guidance center (Art. 18 Juvenile Law).

Similar to many state level Juvenile Justice statutes in the United States, the Japanese Juvenile Law opens the way to the ordinary criminal procedure, the so-called waiver to the Public Prosecutor's Office (Art. 20 Juvenile Law). If an offence is punishable by the death penalty or imprisonment with or without forced labour, the judge at

the Family Court can send the case to the public prosecutor if he finds that the nature and circumstances of the offence require a criminal sanction. The matter will then be tried at the Summary or District Court as a Juvenile Criminal Case according to the procedure concerning ordinary criminal cases with some exceptions as laid down in the Juvenile Law (Art. 45–60 Juvenile Law). Criminal punishments like the death penalty, life imprisonment or indeterminate sentences are mitigated to imprisonment with lower minimum and maximum limits (Art. 51–52 Juvenile Law). However, until a little while ago, this waiver was only admitted for juveniles age 16 years and over. As will be shown below, a hotly debated change has been introduced with last year's revision of the Juvenile Law.

Table 2 shows how many out of the total number of juvenile cases adjudicated by the Family Court in 1996 were dismissed without proceeding to a hearing. Roughly 40% of all cases are settled in this way (including cases for want of evidence). Often in such cases an informal conflict settlement has been reached, mediated by the pre-sentence investigator or the Family Court itself. It is a general characteristic of the Japanese justice system. Settlement dispositions can range from a simple warning to voluntary victim compensation or victim-offender reconciliation. In another 25% of juvenile cases the court finds it unnecessary after the hearing to order a protective measure to a juvenile. One can see that non-intervention or diversion is used in two-thirds of all juvenile cases.

Only 5.5% of the cases are sent to the public prosecutor for adjudication in the ordinary criminal procedure. This percentage was still 17.1% in 1967 and has steadily decreased in the last 30 years.

The complaint to the High Court is limited to cases in which a protective measure has been decided. It is remarkable that only the juvenile, his legal representative, or his attendant may appeal the ruling of the Family Court (Art. 32 Juvenile Law). The public prosecutor, hence, cannot question the ruling of the Family Court judge. The same applies to the second complaint to the Supreme Court (the reform has introduced some changes, see below). They are seldomly lodged.

Table 2: Adjudication of Juvenile Cases at the Family Court, Complaints to the High Courts and Further Complaints to the Supreme Court (1996)

Family Court, all juvenile cases*	295,296
Waiver to the public prosecutor's office for adjudication in ordinary criminal procedure = serious offences (Art. 20 Juvenile Law) and offenders 20 years of age and over (Art. 19 Para. 2 Juvenile Law)	16,343
Protective measures, all cases = Probation, committal to a reformatory home, committal to a juvenile correction center (Art. 24 Juvenile Law)	56,092
Case referred to the prefectural governor or the child guidance center (Art. 18 Juvenile Law)	155
Dismissal after hearing (without imposing measures)	74,617
Dismissal before hearing (without imposing measures)	117,085
Other settlement	31,004
High Court, complaint Only against the imposition of a protective measure, only by juvenile or his legal representative or attendant (Art. 32 Juvenile Law)	452
Supreme Court , further complaint Only against the imposition of a protective measure, only by juvenile or his legal representative or attendant (Art. 35 Juvenile Law)	n.a.

Note: *Including traffic offences resulting in bodily harm and homicide by negligence and status offences.

Source: Saikô Saibansho Jimusôkyoku 1997, Table 8 and 21.

This very limited appeal system[2] is in line with the rehabilitative aim of the Juvenile Law. It is supposed to promote a speedy conclusion to the proceedings and an immediate implementation of the measures decided or informal settlements agreed upon. Due process guarantees

[2] Family Court rulings are not equivalent to a Criminal Court sentence. Therefore, only complaints and no appeals are possible against Family Court rulings (see Kühne/Miyazawa 1975:11).

or the participation of public prosecutors and victims were thought to be obstacles in this rehabilitative system. For this reason the Family Court deals with the cases in complete secrecy. The victim and the victim's family may not inspect nor copy court records and is not notified of court hearings and rulings. This aspect of the Juvenile Law has drawn broad criticism and was regarded by many commentators as in need of reform.

Additionally, to protect the juvenile from negative stigmatizing effects, the mass media may not publish any information from which the identity of the offender might be deduced (Art. 61 Juvenile Law).

In sum, the Juvenile Law as enacted in 1948 can be characterized as a law emphasizing the protection and education of children and young persons under 20 years of age. Except for the waiver option leading to criminal prosecution in the ordinary criminal court, it contains no retributive elements. Public prosecutors are not involved in the investigation and decision-making process. The central aims of the Juvenile Law are reintegration through individual intervention and, if necessary, treatment in a correction centers. It should not be denied that this "State as Parent" model as practiced in Japan has some negative consequences as well: The due process guarantees are not up to the international standard as laid down in the UN Child Convention. Though the presumption of innocence is upheld in theory, in practice, if a case proceeds to the Family Court, the culpability is normally taken for granted. Victims are denied basic procedural rights, and if the Family Court judge makes a decision based on wrong appreciation of evidence, no one except the offender can file a complaint with the High Court.

> "The Committee recommends that the State party envisage undertaking a review of the system of juvenile justice in light of the principles and provisions of the Convention and of other United Nations standards in this field such as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Particular attention should be paid to the establishment of alternatives for detention, the monitoring and complaints procedures and the conditions in substitute prisons." (United Nations, Committee on the Rights of the Child 1998, Note 48; for the official report see Government of Japan, Ministry of Foreign Affairs of Japan 1996, Notes 256 et seq.)

2. *What Led to the Urge for Reform?*

The urge for reform, which led to last year's amendment of the Juvenile Law, was not the first one. Since 1951, the Justice Ministry has actively been involved in the reform movement because it has held the Family Courts' lenient attitudes to be responsible for the increase in juvenile delinquency. Ever since, the discussion has oscillated between the poles of repression and youth welfare. Ever since, the Justice Ministry and Public Prosecutor's Office has been in conflict with academics and the Supreme Court over the right strategy for the Juvenile Justice System. One of the central issues in this dispute, has been the attempt to re-establish a role for Public Prosecutor in juvenile legal proceedings (Kühne/Miyazawa 1975; Murai 1988).

A full-fledged reform proposal published by the Ministry of Justice in May 1966 contained four major changes:

1. The upper age limit for juveniles should be lowered to 18 years, and a new category of young adults aged 18 to 23 years should be introduced.
2. Juvenile cases should still be referred to the Family Court; cases with young adults, instead, should be referred to the Public Prosecutor who in turn would decide on whether the case should be sent to the criminal court or the Family Court.
3. At Family Court proceedings a Public Prosecutor would take part with the right to appeal to the High Court.
4. Additional protective measures should be added to the Juvenile Law (Art. 24 Juvenile Law).

The proposal was never realized, first of all because it found no support among the practitioners and even the police. With the public prosecutor as the dominant player in the pre-trial period, the balance would have inclined too much towards the system of adult crime control. Another proposal put forward in June 1970 attempted a similar switch to a juvenile procedure dominated by the public prosecutor, but failed to get enough support.

After so many failures, what led to the successful amendment of the Juvenile Law at the end of the year 2000? It was a multitude of factors that can be categorized as follows:

1. A series of heinous crimes committed by young offenders
2. Mass media influence: Overemphasis on violent juvenile offenders
3. A victim's rights movement
4. Claims for a formalized juvenile procedure including due process guarantees

2.1 *Serious Crimes Committed by Very Young Offenders*

A series of serious crimes committed by offenders under 16 years of age has elicited fear of crime and punitive attitudes in the public (major juvenile crimes are summarized by Otake 1997). Correspondingly, the juvenile justice system has been more and more assessed as outdated and ineffective.

A recent report published by the National Police Agency lists 22 cases of serious criminal cases committed by young offenders between January 1998 and May 2000 (Keisatsuchô 2000). The report is limited to homicide (16 cases), robbery resulting in homicide (1 case), assault (2 cases), and hostage taking (3 cases). Of these 22 cases, 12 were committed by offenders under 16 years of age, that is, by juveniles who cannot be prosecuted in criminal courts. The report, which by no means is a representative sample of violent juvenile offenders, remains inconclusive as to the causes of those crimes. However, it points out that school problems were noticed in 60% of all cases (Keisatsuchô 2000, Table 2–4, 12).

Among the violent crimes that have stirred up huge media attention in Japan in recent years, two examples are noteworthy:

1. In 1993, a 13-year-old was killed by schoolmates in Shinjo, Yamagata prefecture. Several days after the boy's body was found in the junior high school gymnasium, seven schoolmates were arrested or taken into preventive custody on suspicion of having committed the crime. Of the seven, six were put on trial at the Family Court. Three of them were committed to reformatories, and three were found innocent by the family judge (the other one was taken into protective custody in accordance with the Child Welfare Law). Those who were found guilty filed a complaint with the High Court, and later a further complaint with the Supreme Court. In both instances the complaints were dismissed, but the High Court acknowledged in its decision that the three, who were found innocent by the Family Court should also have been charged in the case, thus, undermining the credibility of the Family Court ruling.

Obviously, the judge of the Family Court, investigating on his own, was unable to establish the facts behind conflicting statements and alibis. Because neither the victim's family nor public prosecutor is entitled to file a complaint with the High Court, the acquittal of the three suspects was final. Even worse, unable to participate or obtain any direct information during the Family Court proceedings, the father of the victim, lodged a civil suit against the seven and the municipal government to clarify whom was responsible. This case made clear that if the investigation is undertaken solely by the Family Court, the risk of incorrect rulings is high, especially if the suspects are not co-operative or giving contradictious testimony. It is also a bad example of how badly neglected the interests of the victims and the next-of-kin are in a juvenile legal proceeding (see Otake 1997; Kajimoto 2000).

2. The neglect of next-of-kin was also obvious in the 1997 Kobe case in which a 14-year-old boy killed two elementary school pupils, beheading one of them. The head of the victim was found at a gate of Tomogaoka Junior High School (Kobe) (for details see Fujita in this volume). The parents of the victim never got any information from the juvenile court, not even in the civil trial for compensation they won in early 1999 (see Japan Times, Kobe child-killer, parents ordered to pay ¥100 million, 12 March 1999). The Kobe family court sent the boy to a medical correction center where he can be detained until he is 26 years old.

A popular belief among the public and politicians holds that the Juvenile Law has to be strengthened in face of the worsening trend in youth crime. In this view up to now the crime control approach to juvenile delinquency, especially general deterrence, has been completely neglected by legislation. In the age range between 14 and 16 years, no criminal punishment was possible, though societal maturity has changed since the end of World War II (Otake 1997a).

2.2 *Mass Media Influence*

Mass media influence has become a dominant feature in the discussion on juvenile delinquency and the proper reaction to it. From other countries like the U.S. or Germany, it is known how important the published opinion is for the formation of public opinion (Schwarzenegger 1992: 317; Roberts/Stalans 1997: 265). Thus, for the understanding of the latter, it is crucial to know how the Japanese

mass media report on crimes committed by juveniles. Research indicates that the picture given of young offenders is distorted. The reduction of complexity and the concentration on emotional aspects of the crimes make simple solutions look attractive (Hirota 2000; Tokuoka in this volume).

In consequence, several opinion polls confirmed that a majority perceived an increase in the juvenile crime rate and a lack in deterrent efficiency of the Shônenhô. In a survey[3] conducted by the Prime Minister's Office in April 1998, 93% of minors and 94% of adults responded that in their view juvenile delinquency was on the rise. Asked what was the biggest social problem, 85% of minors and 82% of adults cited murders and wounding with knives (Japan Times, Juvenile delinquency up, 90% say in poll, June 8, 1998). Due to broad media coverage and sensational depictions of these events, public opinion started to favour repressive means of crime control (see Otake 1997a; Japan Times, 76% in Kobe want Juvenile Law revised: survey, June 30, 1998).[4] Though the Juvenile Law was still faring well in everyday cases, a growing fear of crime made the people ask for more severe punishment of young offenders. But the experiences made with these headline cases pointed also to real weaknesses in the juvenile justice system as described in the following two sections.

2.3 *Victims' Rights*

The fact that the interests and rights of victims or the victim's family are completely ignored within juvenile procedures led to the foundation of a group called "Group of persons affected by juvenile crime" (*Shônen Hanzai Higai Tôjisha no Kai*).[5] This group started to combat the one-sided approach of the Juvenile Law and actively participated in the reform debate prior to the enactment of the new provisions. In 1998 it issued its first document containing five demands for reform:

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[3] Sample size: 3,000 minors between 13 and 19 years, 3000 adults over age 20. Response rate: 65% minors, 70% adults.

[4] A survey carried out in summer 2000 among 400 third-year high school students across Japan shows that 23.8% of respondents believe young offenders aged 16 or older should be punished as severely as adults. The average age chosen for the starting year of adult criminal responsibility was 13.8 years. See Japan Times, Kids want young criminals treated strictly, January 28th 2001.

[5] See their website at http://www4.justnet.ne.jp/~takatora/welcome.htm (last visit: August 16th 2001), including a report on the reform bill for the Juvenile Law, October 19th 2000 (*Shônenhô kaiseian ni kansuru ikensho*).

The group requested that facts about cases learned during both investigations and juvenile inquiry proceedings in family courts be disclosed to the victims or their families. It also wanted victims or their families to be allowed to state their opinion during juvenile inquiries. Furthermore, the group urged that the law be reviewed so that prosecutors get to participate in the Family Court proceedings. It also wanted similar cases in which youths have committed violent crimes to be handled differently from those in which the crimes committed were minor offences, such as thefts. Finally, the group demanded that parents of minors committing crimes be obliged to take responsibility for their children's wrongdoing. As will be seen later, almost all demands have been included in the revised Juvenile Law.

Last year, the group published a report on the reform bill for the Juvenile Law (*Shônenhô kaiseian ni kansuru ikensho*) adding some demands that were ignored by the preparatory committee:

1. The upper age limit for applicability of the Juvenile Law is reduced from 20 to 18 years.
2. In cases concerning attacks on the life of a victim, a lawyer or counsel is to be appointed to the victim or victim's family free of charge.
3. The responsibility of the guardian of second-time juvenile offenders is to be clarified.
4. Regarding offences committed while on probation, the responsibility of the probation office or probation officer is to be clarified.
5. The right to file a complaint as provided in the reform bill is to be given not only to the public prosecutor, but also to the victim or victim's family.

However, not only the victims and their families campaigned for a revision. A movement for the empowerment of victims in the administration of the criminal justice system, both among practitioners and legal scholars, has got stronger in the last decade. It brought forward calls for financial support, counseling or support services, and a victim-oriented criminal policy in general (Miyazawa et al. 1996; Nihon Higaisha Gakkai 2000). Therefore, the claims made by the victims' group were largely found to be legitimate.

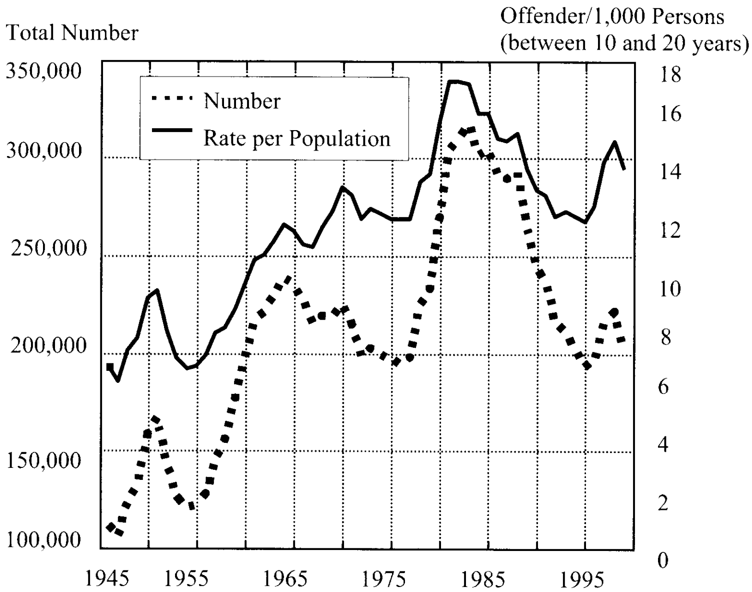
2.4 *Claims to Strengthen the Rights of the Accused Juveniles*

The Japan Federation of Bar Associations (JFBA) introduced a completely different perspective into the debate. Opposing any changes to the Juvenile Law in the first place, they changed strategy during the preparation work in the reform committee claiming that the rights for juvenile suspects must be strengthened before and during the juvenile proceedings. The JFBA still criticized the major part of the new provisions holding that it would undermine the existing rehabilitative approach to juvenile delinquency under the auspices of the Family Court. The focus would turn backward to the criminal act itself and to retribution. The JFBA pointed to the fact that the paternalistic approach to juvenile justice is still dominant in Japan was in disaccord with international standards like the U.N. Convention for the Rights of Children, of which Japan is a signatory state. It also pointed to the deficiency in implementing the basic principles of the Juvenile Law. In many cases the Law does not provide for an appeal even if the juvenile judge acts against the best interests of the young offender (see Izumida-Tyson 2000).

3. *Is the Juvenile Crime Rate Really Up? The Empirical Evidence*

According to the annual police statistics, the number of juvenile offenders has been on the increase since World War II (see Figure 3 for the overall trend, for a self-report study among students see Schwarzenegger et al. 1995). The prevalence rate peaked in the early 1980s at over 17 offenders per 1000 persons of the same age group (10 to 20 years of age). Detailed analysis shows that the change over time is mainly due to variations in the category of larceny.

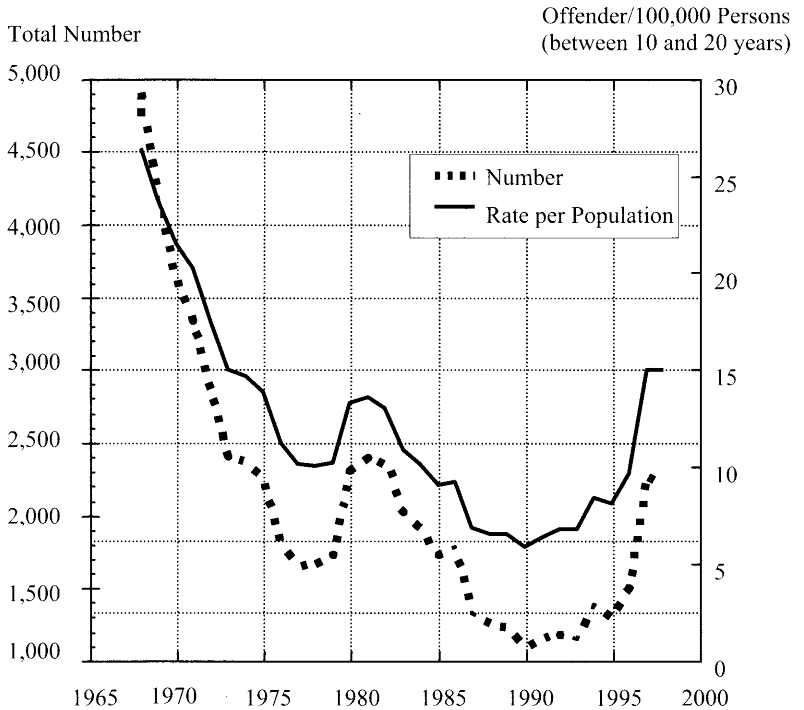
Figure 3: Trends in the Number of Juvenile Penal Code Offenders Cleared by the Poliçe, and the Rate per Population (1946–1999)



Note: The number and the rate after the year 1970 exclude those of traffic professional negligence by juveniles unter 15 years of age.

Source: Hômu Sôgô Kenkyûsho 1998: 472; data for 1998-99 have been retrieved from Hômu Sôgô Kenkyûsho 1999/2000: www.moj.go.jp/HOUSO/hakusho2.html (last visit August 15, 2001)

Figure 4: Trends in the Number of Very Serious Crimes Committed by Juvenile Offenders Cleared by the Police, and the Rate per Population (1968–1998)



Note: The category of very serious crimes ("atrocious crimes", *kyôakuhan*) consists of homicide, robbery, arson, and rape.

Sources: Keisatsuchô 1973–1999, calculation by the author, data for 1986, 1973 and 1972 vary according to the edition of White Paper.

Taking into account only the most serious or "atrocious" crimes (*kyôakuhan*), a completely different picture emerges (see Figure 4). The prevalence rate had been highest in the mid-1960s, declining sharply between 1970 and 1977, and once again during the 1980s. Earlier data from 1950 to 1968 reveal that the rate of "atrocious" crimes had been even higher during the 1950s (Shibuya 1997a: 3; Hata/Kuwahara 1999: 239). It has to be pointed out that the marked decrease happened under the rule of the same Juvenile Law that is stigmatized as too "soft" in the current debate.

Since 1995 the prevalence rate has risen again, but the increase is not as dramatic as one might conclude from mass media reports (see also Government of Japan, Ministry of Justice 1998: 1; Metzler 1999 and 1999a for an international comparison). Research in the variations of the homicide rate over time according to age groups also clearly shows a sharp decline during the period of 1960 to 1980. From a criminological point of view, it would make much more sense to focus on explanations for the causes of this positive development than on the relatively minor upward-turn during the last few years (Hirota 2000; Kageyama 2000).

A report issued by the Ministry of Justice in July 1997 shows that the recidivism rate among 14 and 15-year-olds found guilty of "atrocious" crimes and committed to a juvenile correctional center (since 1965) is only 2%. 42% of them committed less serious offences such as theft or assault after release (Shibuya 1997: 3). Compared to recidivism rates in other countries, these results show that the Japanese approach of rehabilitating juvenile offenders into society is working, and considering the low intensity of repression and scarce use of detention in the juvenile justice system it can be regarded as successful (see Metzler, A. in this volume).

4. *Changes Adopted by the Diet*

After the problematic Yamagata-Case, the Supreme Court started meeting regularly (since November 1996) with officials of the Justice Ministry and the JFBA to discuss the need for a reform of the Juvenile Law, especially regarding the fact-finding process and the adoption of evidence. Because of the limited complaint system in the Juvenile Law the decisions made by the family judges are normally final verdicts (see Otake 1997; Hirose 1999). Another proposition advocated

the participation of public prosecutors in juvenile proceedings in cases where the facts are contested (see Murai 1999; Taguchi 1999; Shônenhô Kenkyû Yûshi 1999).

In July 1998 the Justice Ministry asked the Legislative Council, an advisory panel to the justice minister, to debate how the Juvenile Law could be improved. The Council's Juvenile Law Committee started discussing the following four major points:

1. Whether to increase from one the number of family court judges handling juvenile crime cases.
2. Whether to let prosecutors participate in juvenile hearings.
3. Whether to extend the maximum detention period for youth suspects from the current 28 days.
4. Whether to give prosecutors the right to appeal family court decisions.

The proposal to lower the minimum age at which criminal offenders can be punished according to the criminal law from 16 to 14 years was not on the agenda of the Juvenile Law Committee. Instead, a panel of the ruling Liberal Democratic Party (LDP) introduced it to the Minister of Justice at the end of 1998. Based on the recommendations of the Legislative Council's Juvenile Law Committee, the government on March 9, 1999 endorsed a bill to revise the Juvenile Law. Among other changes, the bill embodied the claim to admit prosecutors in juvenile procedures involving crimes for which adults would face the death penalty or life imprisonment, or prison sentences of more than three years, or in which the victim was killed. However, unlike the LDP's proposal the government-proposed bill did not change the age limit in Art. 20 Para. 1 Juvenile Law.

In the months that followed, the bill had been deferred due to what the ruling parties initially claimed was a lack of time to fully debate the legislation. Following a fatal bus hijacking in Saga Prefecture and the fatal stabbing of an elderly woman in Aichi Prefecture, both crimes committed by 17-year-old boys, the ruling coalition of the LDP, New Komeito and the New Conservative Party in May 2000 hastily arranged deliberations on a bill to revise the law in the Diet.

Contrary to the standard legislative process, the bill was drafted by the coalition itself and formulated by the House of Representatives' Legislative Bureau and not by the bureaucracy of the Justice Ministry (on standard legislative practices in Japan see Matsukawa 1998). The two major parties of the opposition camp sided with the ruling camp

after the introduction of a supplementary provision stipulating that the new Juvenile Law is to be reviewed after five years.

The bill was enacted by the Diet on November 28, 2000 and became effective as of April 1, 2001. The most important changes can be characterized as follows (see also Sawanobori 2001).

4.1 *Extending the Waiver System*

One of the most important changes concerns the option of waiving a case to the public prosecutor's office, and by consequence, starting a criminal proceeding at a competent District Court which can lead to criminal punishment provided by the Penal Law. Before the revision, this option was restricted to offenders of 16 years and older. After the cancellation of this restriction in Art. 20 Para. 1 Juvenile Law, the waiver had become possible with respect to all offenders between 14 and 20 years of age provided that the offence is punishable by the death penalty or by imprisonment with or without forced labour. This step marks the clearest deviation from the rehabilitative ideal of the 1948 Juvenile Law (strongly criticized by Dandô 1999 "shame of the century"; Odanaka 1999; Dandô 2000; Izumida-Tyson 2000).

In addition, according to the new Para. 2 of Art. 20 Juvenile Law, the waiver has made a general rule for all juveniles aged 16 or older accused of intentional homicide, thereby subjecting them to indictment and criminal trial as adult suspects. The family court can make exceptions in cases where a protective measure is regarded as adequate.

4.2 *Improvement of Family Court Hearings*

Important changes have been made to the way Family Court hearings are handled. The basic guiding principle according to which the hearing should take place in a harmonious and cordial atmosphere has been amended by a clause saying that it should stimulate, at the same time, the introspection of the juvenile who is delinquent (Art. 22 Para. 1 Juvenile Law). In order to prevent mistakes, from now on three Family Court judges will sit in the case (Art. 31–4 Para. 4 Court Law, see Miyazawa 1999). Finally, in cases where the offender by intentional criminal conduct has caused the death of a victim and in cases where a minimum penalty of 2 years or more of imprisonment is applicable, the Family Court, if it finds it necessary that a public prosecutor participates in the fact verification, may decide to admit the

public prosecutor to the proceedings (Art. 22–2 Para. 1 Juvenile Law). If a public prosecutor is admitted, the Family Court is required to assign a state-appointed lawyer to act as attendant, if the juvenile does not yet have a lawyer (Art. 22–3 Para. 1 Juvenile Law, see also Taguchi 1999).

4.3 *Improvement of the Victims' Role in the Juvenile Procedure*

Victims and their next of kin are allowed to inspect and copy court records concerning the delinquent act (Art. 5–2 Para. 1 Juvenile Law). During the proceeding they may upon request convey statements to the Family Court judges (Art. 9–2 Juvenile Law). A system of notification of the victim and his/her next-of-kin by the family court is introduced. The notification covers all important decisions made during the proceeding (Art. 31–2 Para. 1 Juvenile Law). In May 2001, the mother of a homicide victim was for the first time allowed to speak during the court hearing at Ôtsu Family Court (see Japan Times, Shiga killer teen sent to reformatory, May 17, 2001).

4.4 *Power to Appeal*

In cases where the public prosecutor is admitted to the proceedings, he may file a complaint with the High Court *(kôkoku)*, if the Family Court ruling contains serious mistakes (Art. 32-4 Juvenile Law).

5. *Conclusion*

At the last meeting of the German Criminal Lawyer's Association in Passau, Prof. Michael Walter held a conference speech on "The crisis of youth and the answers of the penal law" (Walter 2001), in which he portrayed a very similar pattern in the debate about the future of the juvenile justice system. Like in Japan, in Germany and Switzerland a discrepancy exists between the "get tough" attitude among politicians and the general public, on the one hand, and the opinion of scientists and practitioners working with juvenile offenders on the other. This discrepancy is manifest in the debate about lowering the age limit for criminal liability in Germany from 14 to 12 years, for example, or about the abolition of a separate age group of young adults. Behind this policy of individual attribution of responsibility, which is intensified by emotional mass media reporting lies also a new tendency to

cause a distraction from societal causes of deviancy and criminal behavior.

It has to be stressed that the reform of the Japanese Juvenile Law is shortsighted on several accounts:

1. It is based on the simple assumption that severe sanctions will reduce the number of violent juvenile crimes, but criminological research indicates that "getting tough" does not solve the problem. There is no empirical evidence that either the severity or the probability of punishment has a deterrent effect. Therefore, the length of a prison sentence or type of sanction have little influence on the law-abiding behavior of juveniles (see Kaiser 1996: 258). The "get tough" policy is much more a reaction to the public's fear of crime or perception of safety and the lawmakers' nervousness in showing determination than an action to reduce the juvenile crime rate.[6] The coalition parties have not given any sound explanation as to the efficacy of the lower age limit for waiving cases to the criminal courts. It has to be remembered that under the old Juvenile Law a remarkable diminution of violent juvenile crimes had been achieved between 1960 and 1980.
2. The moral commitment to the legal norms depends principally on informal reactions to deviant behavior. Especially in societies like Japan, in which behavior tends to be controlled by external more than internal factors (for an application of the "locus of control" model in a Japanese context see Tubbs 1994), a lack of parental and societal supervision and guidance negatively affects the conformity with legal norms. In the last 25 years a trend towards nuclear families has brought with it a new pattern of family dynamics characterized by a strong mother-child relationship and a weak presence of fathers. The post-baby-boomer generation has been brought up

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[6] At the time the Symposium took place in Halle (June 8, 2001), a mentally ill offender with a record of aggressive behaviour stormed into an elementary school in Ikeda, Osaka Prefecture, and fatally stabbed eight children and wounded 15 others. The public outcry and continuous mass media reporting led the conservative Prime Minister Koizumi to make the following declaration on the very next day: "We are beginning to see cases in which those (with mental illnesses) who are arrested return to society and commit crimes again ... The safe society is crumbling and this is a significant incident." (see Japan Times, Koizumi to Rethink Law for Mentally Ill, June 10 2001). On Monday (June 11, 2001) the LDP held its first meeting to discuss preventive measures for offenders with psychiatric illnesses [The Japanese Criminal Law does not know protective measures (Massregeln), which can be applied to cases of mentally ill offenders without criminal culpability].

with a new set of values emphasizing competition, economic success and egoism (see Schwarzenegger 1997: 85; Kawanishi 2000). A good prevention policy would focus on supporting the various agents of norm conformity and social cohesion: family, schools, peer groups, and to some extent, the media.

3. The mass media operate by their own rules: "Newsworthiness" comes before social reality (Reiner 1997; Warr 2000; Schwind 2001: 260). The central criterion for choosing crime stories is the seriousness of the act, which leads to an over-representation of violent crimes. This is especially manifest in the case of homicide, which tops the list of crime news with 22% of all articles (two hundred times its share in crime statistics).

   The criteria for selection are mainly determined by the media consumers themselves, as there has always been a demand for sensation and emotional thrill (for empirical evidence and consequences in the context of criminal justice see Schwarzenegger 2000: 350). In recent years, however, the media coverage has gained a new dimension. Due to higher competition in the media, crime stories in tabloids and radio/TV programmes are shifting away from information and towards personal drama. The private TV channels in Japan regularly fill their variety programs with repetitious reports about shocking crimes, trying to give psychological portrayals of weird personalities (see also Hirota 2000). The call for a reform of the Juvenile Law was certainly amplified by this "media reality". It will be one of the crucial questions in the criminal policy of the next decades, whether and how the distorting feedback loops between publicized opinion, public opinion and criminal legislation can or should be corrected.

It should not be dismissed that the reform of the Japanese Juvenile Law comprises some positive aspects as well: It gives participation rights to the victims and their families in juvenile procedures. Even the fiercest critics (like Dandô 1999; 2000) have welcomed this amendment. Additionally, the shift to a more formal procedure with better defence rights for juveniles and the improvements made to the fact-finding process in juvenile hearings bring the Japanese Juvenile Law more in line with international human rights standards. It remains doubtful, however, whether these positive elements will outweigh the expected negative consequences (especially of the waiver system for juveniles under 16 years of age).

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Reconsidering the "Crisis"

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