

Recent Changes in Youth Justice in Japan

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1. Introduction

Despite a plethora of discourses upon youth⁽¹⁾ justice among legal practitioners and academics in Japan, very few attempts have been made thus far at giving observers in other jurisdictions a better understanding of Japan's system of dealing with children and youths that are in conflict with the law. Legal concepts do not always translate well across national borders, but one could nevertheless obtain a mutual understanding of the legal systems between different jurisdictions with the greatest possible circumspection about the distinctions. However, a close study of the youth justice regime is not necessary for our purposes, because it would not be enlightening to those who wish to identify the major trends in the development of responses to youth offending in Japan.

2. Recent tendencies in youth justice reforms : Evolution and Models

In concert with a global tendency in legislative reforms to get tough on youth crime from the late 1990s onwards⁽²⁾, the early years of the twenty-first century in Japan have witnessed amendments three times to the *Juvenile Law 1949* (in 2000, 2007 and 2008). In Japan, as well as in most jurisdictions, public outcry over youth violence has led to a more punitive approach and emphasis on new laws and policies on protecting society (Cf. N. Bala et al, 2002). The well-

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- (1) The term 'youth' is referred to as young persons covering a wider age range than 'juvenile' does. The former is often used in the UK, whereas the latter is used in Queensland and the United States. In Japan also, using 'juvenile' seems to be common in describing minors in conflict with the law under 20 years of age. Here both terms are used interchangeably.
- (2) E. g. *Canada's new Youth Criminal Justice Act*, enacted in 2002, the *Crime and Disorder Act 1998* of the UK, Northern Ireland's *Criminal Justice Order*, enacted in 1998, Ireland's *Children Act 2001*, and so forth.

known ‘Youth A’ case seems to have triggered the amendment in 2000⁽³⁾ that enables Family Court to transfer youths aged 14-15 to the public prosecutor, who shall indict them for their criminal behaviour. Prior to this amendment, the public prosecutor was unable to indict a 14-year-old youth, notwithstanding that Section 41 of Penal Code stipulates a child below the age of 14 cannot be criminally liable and therefore cannot be convicted of an offence. In other words, those aged 14-15 were exempt from criminal prosecution even if they were held accountable in substantive law. In respect to the amendment in 2007,

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- (3) A 14-year-old boy in 1997 fatally attacked a 10-year-old girl with a hammer and stabbed another girl with a knife in March, and two months later he strangled an 11-year-old boy and placed his severed head on the main gate of the teen's school. The nation gasped in horror as the boy, using the name ‘*Sakakibara Seito*’, taunted police in a message he left with the victim's head. Following his detention, some experts voiced strong concerns that ‘Youth A’, as he is known, could never be rehabilitated and safely returned to society, but Justice Ministry officials had other ideas. They drew up a special rehabilitation programme that lasted for six years and five months, although in principle a juvenile delinquent could only be held at a reformatory for a maximum of two years at that time. A team of around 10 specialists, including three psychiatrists, was assigned to monitor his progress. ‘Humans and vegetables are the same’, Youth A reportedly claimed in the early days of his rehabilitation at the Kanto medical reformatory in Fuchu, Tokyo. After Youth A was transferred to another reformatory with vocational training facilities in Sendai in February 2002, he told his examiners, ‘I want to personally offer my apologies to the bereaved family members... I want to take up a full-time job and do whatever I can to atone for my actions for the rest of my life’. Youth A returned to the Kanto reformatory in November 2002 after learning work skills and entered the final phase of his rehabilitation programme, during which experts concluded that the sexual sadism and antisocial propensities that had driven him to commit his atrocious crimes are behind him. Before his release, Youth A was given a new identity ‘for his own safety’. He has moved to an undisclosed address. (Mainichi, 2004. 03. 10)
- (4) In September 2003, the Nagasaki Family Court ruled that a 12-year-old killer of 4-year-old *Shun Tanemoto* be ordered to spend 12 months at a special children's facility to rehabilitate himself. The 12-year-old boy has reportedly admitted to abducting *Shun*, stripping him naked and mutilating his genitals before fatally hurling the boy from the top of a multi-storey car park on 1 July 2003. Criminal law in Japan forbids offenders under 14 from being held responsible for criminal wrongdoings. The court reached the decision after examining a report submitted by a psychiatrist, who studied the 12-year-old's brain waves and conducted mental tests. The psychiatrist reportedly concluded that the boy suffers from a disorder that makes it difficult for him to interact well with others. The report stressed, however, that the disorder has no direct link to his heinous crime. (Mainichi, 2003. 09. 29)

the cases of *Shun Tanemoto*⁽⁴⁾ and *Satomi Mitarai*⁽⁵⁾ undoubtedly made a great impact on the revision that incorporates some provisions authorising not just power to the police to investigate children under 14 years of age who infringe on the penal law, but also an extension to the use of custody in the reformatory to include 11- to 13-year-olds. The latest amendment in 2008 was made because it was recognised that victims needed to be involved in youth hearings and criminal proceedings, especially after the enactment of the *Basic Act on Crime Victims 2004*, which has expanded the rights of crime victims in all aspects.

Such a series of reforms has been criticized by many academics, especially those who read youth justice law. Some argue that punishing juveniles severely cannot solve juvenile delinquency and therefore can be detrimental to the principle of protecting children and adolescents who come into conflict with the law. Others point out that the provisions for protecting a juvenile's rights are insufficient compared with those for strengthening punitive authority. We must surely admit that increasing the severity of sanctions appears to have little impact to keep youths from offending, and there is no evidence that harsher responses decrease youth crime in the long run and hence improve the protection of society. Those kinds of remarks, however, leave the question of addressing the public's and victims' sentiments towards youth crime unanswered. Critics seem to be united in their belief that rationalities, *ipso facto*, can overcome irrational sentiment.

Most of us would accept that the youth justice system in Japan had been regarded as a 'welfare model' of youth justice. The evolution of the recent legislative regimes marks a move away from the welfare model towards regimes that reflect a justice model, which focuses on the punishment or

(5) On 1 June 2004, an 11-year-old girl called her old best friend, *Satomi Mitarai*, into an empty classroom, then walked behind her and slit her throat with a paper cutter, killing her. Apparently, the girl was upset because 12-year-old *Satomi* had implied that her friend looked 'fat'. *Satomi* and her killer had once enjoyed a firm friendship based largely on their shared liking for the internet. They set up their own websites, frequently exchanged mail, and kept a close watch on what the other was doing. Unfortunately for *Satomi*, one of her postings implying her friend looked 'heavy', appears to have sparked her cold-blooded killing, carried out execution-style by the 11-year-old girl. The juvenile was moved to a Dependent Children Home in Tochigi Prefecture. (Mainichi, 2004. 12. 27)

accountability for an offence. But it would be premature to think that the reforms are a clear shift away from the welfare model to the justice model, since they do not change the basic structure of the youth justice system of Japan. The greater proportion of juvenile cases is still dealt with through the procedure of youth proceedings at Family Court, which is totally different from criminal proceedings at District Court. Only serious cases, in principle, can be transferred to the adult criminal court. We should notice, on the one hand, that characteristics of the welfare model are informality and the lack of due process of law. There is only limited recognition of a child's legal rights in this model. On the other hand, the current system holds indeterminate sentencing in the criminal proceedings, so that a juvenile can be kept in custody as long as necessary for rehabilitation. In every sense, our jurisdiction continues to operate a youth justice system that has a strong welfare orientation.

3. Victim Involvement : Towards Kiwi Justice?

Nowadays, increasing the involvement of victims in the youth court process is a main issue in every jurisdiction. The latest amendment in 2008 includes a provision concerning the passive attendance of the victim at a youth hearing proceeding at Family Court that arouses a considerable controversy over the necessity and the legitimacy among academics. Opponents of the victim's attendance argue that even if it is only in serious cases, the youth tends to be daunted by the presence of the victim and therefore he or she will hesitate to speak about the details of the incident, whereas proponents of the victim attending emphasise the victim's need to know the full story of what happened in his or her own case.

This new regime differs from the active attendance of victims incorporated into Criminal Procedure Code of 1948 that also was amended in 2008⁽⁶⁾. The victims attending cannot question the youth, nor can they give their opinions to the court. It seems that the legislators tried to balance the interests of the youth with those of the victim. This balanced approach does not, however, incorporate a restorative justice philosophy into the youth justice system in Japan. It is only expected that the victim can be present at the hearing. Moreover, in Japan, any restorative intervention is unavailable at both pre-court

(6) This regime seems to be somewhat similar to the *Nebenklage* in Germany.

and post-court stages as a statutory system, despite the international recognition of restorative justice. Indeed, in Chiba prefecture and in Kansai area, some Non-Profit Organisation groups are offering a range of restorative interventions involving mainly victim-offender mediation, but their initiatives are not yet linked formally to the youth justice regimes. In many jurisdictions, restorative justice processes tend to be attached to diversion programmes. The famous New Zealand's family group conferences [FGC] have provided a model for legislation around the world, diverting many youths from the court process. Although, in Japan, the youth hearing proceeding *per se* can be regarded as a *modus operandi* of diversion, a new restorative justice regime outside the court should be introduced based on the 'Kiwi model', in which informal sessions will be held with the youth, his or her parents, other relatives, community members, the victim and a well-trained facilitator. Diversion is originally from the adult justice and corrections system, but now should be understood as part of the formal youth court process as well. In this sense, the FGC process in New Zealand has the potential to hold young offenders truly accountable for their actions, and it is capable of incorporating welfare objectives alongside traditional justice and due process values (G. Mousourakis, 2007). To sublimate the traditional 'welfare versus justice' debate, something of a restorative justice approach should be established in the youth justice system in Japan⁽⁷⁾.

4. Conclusion : Public Sentiment Towards Youth Crime and Justice

Finally, it must be noted that victim involvement does not necessarily encourage us to adopt a 'get tough' policy on youth crime. Indeed, the public

(7) To circumvent the tensions between the 'welfare' and 'justice' models, in the UK, resources should be shifted from the juvenile justice system to more proactive, preventive work with children at risk of offending (Audit Commission, 1996), which became one of the main philosophical planks underpinning the new approach to juvenile justice as enshrined in the Crime and Disorder Act, 1988. There is a growing recognition of the value of trying to prevent youth crime rather than merely responding to it. This tendency might be in concert with the development of environmental criminology. Now a kind of 'Prevention Model' is emerging in youth justice system. It emphasises the need to prevent children from committing offences in the first place. That is, indeed, a 'nip offending in the bud' approach, but it is not certain that this idea is consistent with the welfare of children (Cf. J. Graham, 2002, J. Graham et C. Moore, 2006).

tends to feel sympathy towards the victim of crime rather than the youth who committed the crime. But public sentiment is prone to be affected by media reports, which frequently are inflammatory. Such reports contribute to the sense of ‘moral panic’ and demands for the court judgments to punish the youth severely. Now we have to ponder the way of dealing with the public sentiment. Should we adopt ‘get tough’ youth justice policies because of *Vox populi, Vox Dei*?