

Structure of the Juvenile Justice System in China: A Japanese Perspective

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I Introduction

From the late 1990s, many countries have enacted new juvenile justice laws in response to public outrage over youth violence. Consistent with this global trend, China has enacted the Law of the People's Republic of China on the Protection of Minors (中华人民共和国未成年人保护法) in 1991 and the Law of the People's Republic of China on the Prevention of Juvenile Crime (中华人民共和国预防未成年人犯罪法) in 1999⁽¹⁾.

The public reaction of anger against youth crime in Japan and other countries has resulted in an increasingly punitive approach and a greater emphasis on protecting both society and the victims of youth crime. For example, since the 1997

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(1) For further details on the Chinese system, see, Dennis S.W.Wong, 'Delinquency Control and Juvenile Justice in China', *Australian & New Zealand Journal of Criminology*, vol. 32, 1: pp. 27-41.,1999, 'Changes in Juvenile Justice in China', *Youth & Society*, vol.32, pp. 492-509., 2001, 'Juvenile Protection and Delinquency Prevention Policies in China', *Australian & New Zealand Journal of Criminology*, vol. 37, 1_suppl: pp. 52-66.,2004. Stephanie Persson, 'China Talks Juvenile Justice Reform: A Constructivist Case Study', *Columbia University Public Law & Legal Theory, Research Paper Series*, No.14-374, 2014. In re the status quo, see, Cao Yin, 'Juvenile justice system advances', 2014, http://www.chinadaily.com.cn/china/2014-11/26/content_18980190.htm (accessed 24 Nov.2018).

‘Child A’ case in Japan (in which an 11-year-old boy was beheaded by a 14-year-old boy in Kobe), the Juvenile Law 1949 was amended four times (in 2000, 2007, 2008 and 2014)⁽²⁾ .

In addition to the need to protect society, both China and Japan have recognised the importance of protecting the human rights of children in juvenile justice proceedings and juvenile institutions. In China, a 2012 amendment incorporated a new chapter on the protection of the rights of juveniles in the fifth part of the Criminal Procedure Law (刑事訴訟法) of 1997. In Japan, the former Juvenile Training School Law was abrogated and instead new safeguards were integrated into the Juvenile Training School Act (少年院法) and the Juvenile Classification Home Act (少年鑑別所法) in 2014.

An essential difference exists between the two justice systems despite the recent trend of legislative reforms. In terms of the systemic structure, the Chinese system follows a European model, whereas the Japanese system has followed an American model since the enactment of the Juvenile Law of 1922. This note analyses some characteristics of the current juvenile justice system adopted in China from a Japanese perspective.

II One type of juvenile offender in China

In the Chinese system, there are three main legal sources dealing with juvenile problems. The Law of the People’s Republic of China on the Protection of Minors of 1991 protects minors’ physical and mental health, guarantees minors’ legal rights and accelerates minors’ development of morality, intellectual power, and physical strength. On the other hand, the Law of the People’s Republic of China on the

(2) See, N.Yoshinaka, ‘Recent Changes in Youth Justice in Japan’, *The Hiroshima Law Journal*, vol.33 No.4., pp.27-29., 2010.

Prevention of Juvenile Crime of 1999 emphasises the prevention of minors' offences. These two pieces of legislation are administrative law and do not deal with juveniles who committed a crime. They address the *ante-delictum* conducts of juveniles.

Furthermore, a 2012 amendment incorporated a new chapter on the protection of the rights of juveniles in the fifth part of Criminal Procedure Law 1997. This amendment deals with juveniles who are the subject of criminal proceedings. A special procedure altered for juveniles governs their treatment. As a justice system, this law has become the only legal source dealing with juvenile offenders and addresses only one type of juvenile offender different to juvenile delinquents.

China has thus adopted a dual system for juveniles. Regarding juvenile offenders, criminal proceedings will be instituted; in case of juvenile delinquents, public safety entities have the power to decide the appropriate institution to which to refer the minor, including corrective refinement facilities, labour refinement facilities, and vocational educative schools. However, the latter system could not be considered as a justice system because of its administrative nature.

III Two models of the juvenile justice system in the world

In terms of the models of juvenile justice, the contrast between 'welfare' and 'justice' models is normally referred to as an indication of the distinction of their fundamental character. However, we will indicate another angle related to the punitive authority. One is the 'criminal law model', and the other is the 'juvenile law' model. The former is based on the idea of criminal law for adults, but it is shaped by an educational philosophy altered for young offenders. Many European countries belong to this model, where the punitive authority can be dealt with by acquittal or conviction. The latter relates to neither criminal law nor criminal procedure, and juveniles should be treated by protective proceedings in the first place. Japan has adopted this model, patterned after the US juvenile court style, since the end of the

Second World War. According to this model, the needs of education or welfare should be considered first, and thus, the possibility of punishment should be regarded as just a ‘fallback’.

Though an educative consideration could be given to juveniles concerned in the course of criminal proceedings, the Chinese juvenile justice system undoubtedly follows the criminal law model because the public prosecutor has the discretionary power to exercise its punitive authority.

IV Three types of juveniles in Japan

In contrast to its Chinese counterpart, Japan’s justice system of juvenile covers juvenile offenders as well as juveniles in conflict with the law under the age of 14—the beginning age of criminal responsibility—and juvenile pre-offenders (Article 3 of the Juvenile Law 1948). In Japan, the Juvenile Law plays a pivotal role in tackling various juvenile problems under the unitary juvenile justice system. The Family Courts do not give precedence the public prosecutor’s decision and render three types of educative measure or involve the Child Welfare Institution. The US occupational authorities criticised that an administrative entity should not impose harmful measures on juveniles, and the Juvenile Law 1948 stipulates some types of ‘judicialisation’ of the treatment of juvenile delinquents as well as juvenile offenders under the philosophy of *Parens Patriae*.

However, whether the Juvenile Law should dominate juvenile justice entirely is a question. With regard to the treatment of minors in need of protection and potential offenders, there could be an idea that juveniles should be treated by an administrative mechanism, which is much more flexible in accordance with the changing situation of juveniles than rigid judicial diagnosis. This could indicate some problems in Japan on one hand and some possibilities of the Chinese system on the other.

V Problems in Japan

The angry public reaction to youth crime in Japan has resulted in an increasingly punitive approach and a greater emphasis on protecting both society and the victims of juvenile crime. Consistent with this 'getting tough' trend, the Juvenile Law 1949 was amended four times (in 2000, 2007, 2008 and 2014) through the expansion of penalties. Despite these amendments, there is still a gap between the ideal of the Juvenile Law and the public sentiment. The public regard the treatment of juveniles as too tolerant, especially in the case of imposing protective measures on juveniles, albeit protective measures have a hybrid nature of protection and punishment and retain the latter *de facto*. This situation entails an impure and contradictory character of the juvenile justice system in Japan. Punitive power remains in protective measures, which is perhaps not the best use of protective or welfare treatment in favour of juveniles. We must find out a way of managing the punitive power and the public sentiment. The juvenile justice system could be improved through the detachment and thereafter the cooperation between protection and punishment⁽⁴⁾. Specifically, the 'criminal law model' seems to be better in that regard.

VI Concluding Remarks — Possibilities of the Chinese system

In the 'criminal law model', the public prosecutor has the power to charge the juvenile; therefore, the punitive authority can be legally dissolved in the criminal proceedings. The penalty imposed can serve as a punishment while the concomitant protective measure remains separate and retains its purely protective nature. Administrative measures can concur with judicial measures; therefore, Chinese

(4) N.Yoshinaka, 'Historical Analysis of the Juvenile Justice System in Japan', *The Hiroshima Law Journal*, Vol. 20 No.3., p.292., 1997.

protective measures that pertain to administrative treatment can be imposed on juveniles even if he or she has already received a penalty in the same case. This does not damage the principle of ‘double jeopardy’ or *ne bis in idem*. In this sense, China has a lot of potentials to implement the full welfare system through the Law of the People’s Republic of China on the Protection of Minors 1991 and the Law of the People’s Republic of China on the Prevention of Juvenile Crime 1999, though they could still improve their measures and treatment. In particular, the best interests of the child and the due process rights thereof should be observed. Furthermore, a third party, such as an ombudsperson, could be incorporated into the Chinese system to achieve them. In addition, some types of diversion programme might be introduced to bridge the gap between judicial and administrative systems.

The criminal law model does not necessarily lead to the so-called justice model. The Chinese justice system of juveniles is thus expected to accomplish the welfare model in future.

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