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Publication Date
2005-05-27

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1. Introduction

Japan can be said to be currently showing a major tendency towards stricter punishments and penalties in its criminal law and juvenile law. This can be seen in many ways, including the amendments of 2004 to Japanese criminal law—said to be the first amendments in 100 years, and designed to provide stricter punishments; the revisions to the Juvenile Act of 2000 that preceded the changes to the criminal law, where numerous stipulations with stricter penalties were adopted; the submission in March 2005 to the National Diet of further draft Juvenile Act amendments that would enable novel detention at closed facilities—where open facilities had been the previous practice—for juveniles under 14 years of age who have no criminal liability; as well as the overall tendency towards stricter penalties in recent times as seen in the demands for punishment by public prosecutors and the sentencing of judges (Document 13, p. 20).

In terms of this point, as pointed out in general in Japan, facts that serve as the backdrop for this recent trend towards stiffer penalties, and some of the origins and triggers of this trend, are found in the incidents listed below.

First half of 1990s
Acts and crimes of violence by juveniles begin to be reported frequently by the mass media.

1997
The occurrence of an incident where a 14 year-old juvenile killed two elementary school students and wounded three persons, and then set the cut-off head of his victim onto the middle-school front gate (the Kobe Incident).

2000
Japan’s Revised Juvenile Act passed (here, an originating factor was the Kobe Incident; this revision, among other things, reduced the age at which criminal disposition is possible from age 16 to age 14, and established remitment to prosecutor in principle for crimes of a certain degree of severity committed by a juvenile over 16 years of age.).

2003
A 12 year-old juvenile enticed away a kindergarten-aged youth, and killed the youth by
pushing him off the parking-lot roof of a building (the Nagasaki Incident).

2004

Japan's Revised Criminal Code passed (this revision, among other things, raised the statutory penalty for crimes of homicide and bodily injury resulting in death, and raised the maximum ceiling for imprisonment for a definite term).

February 2005

In a case involving robbery and homicide by a person who, as a 17 year old juvenile, robbed and murdered a man, for the first time since the Revised Juvenile Act of 2000 went into effect, the Supreme Court of Japan confirmed, on the grounds of the Revised Juvenile Act, a ruling of life imprisonment with labor for a juvenile under age 18.

March 2005

As a follow-up to the Revised Juvenile Act of 2000, with the Nagasaki Incident as one originating factor, a bill for further revision of the Juvenile Act was submitted to the Japanese Diet; this bill would newly abolish the minimum age for confinement at a Juvenile Training School, and enable confinement at a Juvenile Training School for juveniles under age 14 who have no criminal liability.

The present paper places its focus on the background behind this exclusive trend in Japan and the United States of America towards stiffer penalties and the recent developments thereto. Grounding its perspective on the experiences in the United States where, as early as the 1970s, the tendency has been towards stiffer penalties, this paper investigates the possible ways of considering the situation which Japan’s juvenile justice system immediately faces, and seeks to provide suggestions towards what considerations should be taken in response.

In the composition of the present paper, many suggestions were especially indicated by Document 1: Jeffrey Fagan, Franklin E. Zimring, 2000, The Changing Borders of Juvenile Justice: Transfer of Adolescents to the Criminal Court, The University of Chicago Press. The author expresses his sincere gratitude to Professor Franklin Zimring, who so kindly presented to him a copy of that work.

2. Current Status and Historical Background of Stiffer Penalties in the United States

(1) From recent domestic U.S. media reports

The image that the United States is a nation with severe penalties is commonly shared throughout Japan. Certainly, when one reviews recent media reports and statistics and the like, such as those described below, this image of the United States as a country of stiff penalties cannot be denied. Especially as seen, for example, in examples 2) and 3), one has
the impression that punishments for immature juveniles is even excessively severe.

1) From the San Francisco Public Defender’s Office, Fighting for Justice Annual Report 2003, p. 10
   Due to the influence of the “Three Strikes Law,” the population in California prisons had expanded on a large scale over the past 20 year period.

2) From the San Francisco Chronicle, February 16, 2005
   In the case of a juvenile who, at age 12, shot his grandparents and set their house on fire in South Carolina in 2001, in an adult criminal court, the youth (now age 15) who had been under the influence of an antidepressant drug when the incident occurred was sentenced to 30 years in prison in 2005, after having rejected the claims of the juvenile’s attorneys. The attorneys had claimed that the trial in an adult criminal court of a youth who had only been 12 years-old at the time of his crime was unconstitutional, and they made clear their intent to appeal.

3) From The New York Times, March 2, 2005
   As of March 2005, in a total of 19 U.S. states, there were a total of 72 death penalty prisoners in prison who had committed their crimes before the age of 18. From 1990, the penalty had been carried out for 19 death penalty juvenile prisoners, with the most recent being in 2003. (Nevertheless, on March 1, 2005, the U.S. Supreme Court ruled that the death penalty for juveniles who had committed crimes under age 18 was unconstitutional, stating that juveniles are not mature enough to understand the consequences of their acts, etc. Thus, it has been reported that the 72 persons as stated above will have their penalties reduced to life imprisonment.)

(2) Nevertheless, the United States has an eminent history in terms of its juvenile justice system, as this was the first nation in the world to establish a juvenile court, in 1899, in Chicago, the state of Illinois. The participation by public prosecutor in these juvenile courts was prohibited, and it was thought that the methods of an adversarial system would be harmful to the interests of juveniles. The role of a probation officer, who would seek scientific reasons for the delinquency of juveniles, was emphasized; the probation officer would report the causes of delinquency to the judge, and, on this basis, protective measures would be prescribed for the juvenile. History was made: the concept of the Chicago Juvenile Court served as the orientation for the establishment of the Colorado State Juvenile Court in 1903, and from there, this concept spread in a short time throughout the United States (Document 3, pgs. 308-309).

Last half of 1820s
   In New York, Boston, and Philadelphia, “separate treatment” -where juveniles were
handled separately from adults-began.

1899
In Chicago, Illinois, the world’s first juvenile court was established. Thereafter, juvenile courts were established throughout America, and the principle of “protective sentencing” was strengthened.

However, about a half century later, in the 1950s, already voices were heard calling for a strengthening of penalties for juveniles. Thereafter, with an incident where a 15 year-old juvenile successively shot and killed persons in a New York City subway car, a legal system started to spread throughout America such that there was active transfer (remitment) of juveniles to criminal court and imposition of criminal treatment.

1950s
There was a gradual strengthening of public opinion demanding more severe punishment of juveniles (Document 8, p. 449).

1970s
In terms of criminal law overall, especially for felonies, there was a conspicuous changeover, as based on the principle of retribution, to a legal system with absolute [mandatory] fixed-term sentences, the simple calculation [by addition] of prison terms, and heavier punishments (Document 2, pp. 559-564).

1978
In the state of New York, a juvenile age 15 (with a multiple past record), wandered through subway cars with the intent to rob; after finding a sleeping passenger, while using one hand to search the passenger’s pockets, he suddenly placed the gun on the passenger’s head, and killed him. Using the same method, he then killed another passenger. Since the juvenile was 15 years-old at the time, he was not assigned to criminal court, but was instead sentenced in a juvenile court to five years confinement at a facility. This incident became a spur towards a legal system with more severe punishments, and the state of New York newly created a system whereby, for certain types of cases, without the decision of a prosecutor or judge, remitment and automatic transfer were to be performed (Document 1, p. 354).

Such “automatic transfer” became a model that spread to other states. By 1999, automatic transfer existed in 29 states (Document 4,5).

3. A “Post-Remitment Era”? The Emergence of the “Blended Sentence”

(1) Preface
In the manner described above, from the 1970s on, the United States has moved towards a legal system with more severe penalties; especially in the juvenile justice system, since the establishment of automatic transfer in 1978, this tendency has become conspicuous.

Nevertheless, even with bills and measures to ensure more severe penalties, as symbolized by automatic transfer, one has not seen an improvement in public safety- in fact, quite the contrary. According to an investigation in 1987 by the National Center for Health Statistics, the murder rate in the United States was more than seven (7) times that of Finland and Canada, more than 20 times that of Germany, and reaching to more than 40 times that of Japan (Document 8, p. 451). It is noteworthy that such statistics frequently appear in the Japanese mass media, too, and this serves as material that reinforces the image of the United States as an unsafe country.

In the juvenile justice system, too, the U.S. may be facing a vicious cycle in terms of ever more severe penalties, and contrary voices are now heard that question the effectiveness of active remitment of (in fact, criminal measures for) juveniles.

(2) A “post-remitment era”? The emergence of the “blended sentence”

If one were to simplify the picture, one could say that in terms of its juvenile justice system, the U.S. has thus historically passed through several phases: the era up to the middle 19th century, when juveniles were judged the same as adults; the era from the middle-late 19th century through the first half of the 20th century, when protective measures were actively implemented, and thereafter, a trend once more back into the vigorous adoption of criminal measures (transfer), beginning from the middle of the 20th century. Today, however, there has been a “relatively new legislative change” (Document 1, p. 145) towards what might be called an “intertwining” phenomenon-namely, the intermixing of protective measures with criminal measures (known as “blended sentencing”).

1987

The intermixing into “blended sentencing” of what had originally been two separate and distinct systems, “protective measures” and “criminal measures,” had its first establishment in the state of Texas (Document 1, p. 160).

1992, 1993

In the state of New York, there was a blending of protective and criminal measures in the establishment of a “juvenile courts within criminal courts, specialized youth courts within New York City’s adult courts” (Document 1, p. 366).

In terms of this point, according to Document 7, p. 240, even when a juvenile is prosecuted in a criminal court, notification and hearing procedures are closed to the public, there is a sealing of prior records and history that may serve as a hindrance to the reintegration in society of the juvenile, and short-period imprisonment in a facility separate from that for adults is possible.
Up to 1999, 22 states had adopted blended sentencing, with its intermixture of protective and criminal measures (Document 4, 5).

It is noteworthy that, after their adoption of blending sentencing, the states of Massachusetts and New Mexico determined that there was no more need for remitment, and, with the exception of homicide cases, they abolished their remitment systems (Document 1, p. 149).

In terms of this point, it is of deep interest to note that the state of New York itself, which had been the first to establish automatic transfer in 1978, had gone from its limitations regarding assigning juveniles to criminal courts in the same manner of adults until, just 14 to 15 years later, it was the state that had established the “juvenile court within criminal courts, specialized youth courts within New York City’s adult courts.”

It is usual to see as the most conspicuous forms of stiffer penalties the maximum possible application of the remitment system, as symbolized by automatic transfer; in practice, however, the opposite is now becoming the case. For example, it is extremely suggestive that the states of Massachusetts and New Mexico have basically abolished their remitment systems altogether (this was certainly not, however, a transfer over to a concept of protective measures; it was rather due to the fact that, as the result of blended sentencing, the need for remitment (transfer) had vanished).

(3) What is “blended sentencing”?

Now, one may ask, what is the most appropriate way to define “blended sentencing,” the system that in some states has already led to the abolishment of the remitment (transfer) system? As for this point, it is difficult to provide a blanket definition, since the methods and degrees of blending differ within each state. In Document 1, pp. 151-154, however, “blended sentencing” is modeled (characterized) as follows below.

1) Blended Sentencing in the Juvenile Court
   i. States allow the juvenile court to impose either a juvenile or an adult sentence on certain repeat and/or serious offenders. (Massachusetts, etc.)
   ii. States allow the juvenile court to impose both a juvenile and adult sentence, with the adult sentence conditionally suspended unless the juvenile violates the terms of the juvenile sentence or commits a new offence. (Minnesota, etc.)
   iii. The juvenile court may impose a juvenile sentence extending until age eighteen to twenty-one, when a transfer/sentencing hearing or other procedures are triggered to determine if the juvenile should be transferred to serve an adult sentence in the criminal justice system. (Texas, etc.)

2) Blended Sentencing in the Criminal Court
i. States give criminal courts the authority to impose either an adult or a juvenile sentence. (Florida, etc.)

ii. States allow the criminal court to impose both a juvenile and adult sentence, with the adult sentence conditionally suspended unless the juvenile violates the terms of the juvenile sentence or commits a new offense. (Virginia, etc.)

3) Blended Sentencing in Both Courts

A juvenile fourteen or older who commits serious violent felonies may be tried as a juvenile in juvenile court, as an adult in juvenile court if the prosecutor designates the case an adult case or tried and sentenced as an adult in criminal court if the prosecutor files a warrant. (Michigan)

It should be noted, however, that in addition to the methods delineated above, multiple concepts could theoretically exist to serve as choices for styles of blending. It is thought that other methods of blending will be sure to make their appearance into the future.

(4) The background for blended sentencing

Here, one may remark that the juvenile court and the criminal court are, originally, two separate and distinct types of courts. If each single case were to be properly classified and assigned to one or the other, then surely there would be a pure and distinct separation between the two court types. So, why then should there be an emergence of the complex “blended sentencing” as described above?

1) The conflict between “educative punishment” and “retributive punishment”

In regards to this point, the following statement is one of the existing expressions that symbolize this America torn between the line separating the “education” concept from the “retribution” concept, an America tormented with a state of ambivalence (Document 1, p. 147).

There’s this tug of war going on between those who believe we’ve been too soft on juveniles . . . and those that feel we treat juveniles differently because we believe they can be reformed and rehabilitated . . . [Blended sentencing is] really a marriage of convenience between those that want to punish more and those that want to give kinds one more chance. (Belluck 1998, 26, quoting John Stanoch, Chief Juvenile Court Judge for Hennepin County, Minnesota)(Document 1, p. 147)

Documents also exist that express blended sentencing as a “bridge” that crosses the divide between the education of juveniles and the retribution of adults (Document 7, p. 191).

2) The abuse of the remitment (transfer) system

Of course, it is also natural to maintain that blended sentencing emerged from the
practical standpoint of attempting to overcome the demerits of remitment systems.

For example, in a survey in Florida, which is said to be a state even in the United States showing a strong trend towards stiffer penalties, it was found that even when judges of state juvenile courts approach sentencing with the intent of stipulating a criminal-type punishment, on the juvenile’s side, there is a tendency to understand that such sentencing is connected somehow to that juvenile’s own interest. Meanwhile, it was found that criminal court judges have a relatively low interest in the welfare of juveniles, that their procedures are more formal, swifter, and difficult to understand, such that a tendency exists on the juvenile’s side to mix the roles of all of the persons involved in the trial process (the judge, the public prosecutor, the [defense] attorneys) (Document 6, pgs. 135-136).

Moreover, such differences are also remarkable in terms of the statistics showing high recidivism rates, as well as acts of recidivism at an early period, for juveniles who have been remitted (transferred). Thus, in the final analysis, such remitment has led to a worsening of social safety and security (Document 6, p. 149).

In these ways, there has been an increasing necessity for creation of a novel structure to replace the remitment system.

Moreover, only naturally, the adoption of the novel blended sentencing has enabled a statistical decline in remitment rates. The stance that positively evaluates blended sentencing as a system that can more easily deal with the immature nature of juveniles has become dominant (Document 1, p. 169).

In terms of this point, the effects of blended sentencing are beginning to be seen in the state of New York, too, which was the first state to adopt automatic transfer, itself a symbol of stiffer penalties. In other words, in the “juveniles court within criminal courts” adopted by New York in 1992 and 1993 as described above, a variety of ideas exist that reflect the earliest concepts underpinning the creation of juvenile courts: an emphasis on the responsibility of parents, the presentation of alternative programs differing from those for adults, the offering of concentrated supervision during parole, etc. In these and other ways, the criminal court has become in fact more like a juvenile court. This practical transformation into a juvenile-like court has led to a clear reduction in reassignment (corresponds to “sochi” (“transfer”) in the Japanese Juvenile Act, Article 55) rates. Reassignment to juvenile court performed by criminal courts in the period before this transformation to “juveniles-like” courts was high, 6.7% in 1994-1995, and 7.1% in 1995-1996, while conversely, reassignment in the period after this transformation to “juveniles-like courts” was held at low rates, 2.9% in 1994-1995 and 1.1% in 1995-1996 (Document 1, pp. 366 ff.).

4. The risks of blended sentencing

As described above, blended sentencing intends to serve as a “marriage” or “bridge” spanning the divide between the two concepts of protective sentencing and criminal sentencing. Up to 1999, this system has been adopted, as an attempt to overcome the demerits of remitment systems. After the adoption of blended sentencing, certain states have
even abolished their remitment systems altogether. One may interpret blended sentencing, then, as truly a product of the “post-remitment (transfer) era.”

Nevertheless, as pointed out in Document 1, pp. 157 ff., and the same Document 1, pp. 410 ff., as well as in Document 5, pp. 41 ff., blended sentencing also carries with it certain extremely risky aspects, too.

1) Dilution of the protective concept of juvenile courts

Stated another way, “blending” is none other the intermixing into the protective concept of the juvenile court the concept of retribution of criminal courts. It cannot be denied that this results in an overall “dilution” of the protective principle that has been fostered for long years within the juvenile court.

Certainly, blended sentencing does have the merit whereby a juvenile who might have been subjected to excessively severe remitment measures receives instead a “gentler” treatment with blended sentencing. Yet, due to the lowering of the overall educative functions of the juvenile court, this also fosters the demerit that delinquent youths who would have been “covered” by the juvenile courts could now suffer instead from an overall loss of such benefits.

Also, the intermixture of the retributive principle causes confusion and uncertainty not only for those juveniles who would have been treated originally on the basis of the protective principle, but also for the juvenile court judges, the parole officers, the corrections officers, and other persons involved in juvenile courts (stated negatively, “blending” is none other than “confusion” and “incoherence”).

2) Appearance of blended sentencing that is even more severe than remitment

As described earlier herein, blended sentencing has aspects of a legal system that was constructed in order to overcome the harms resulting from overly severe remitment (transfer) systems. Ironically, however, in actual fact, the opposite phenomenon has occurred, in that blended sentencing has appeared that is even more severe than remitment.

For example, in the state of Texas, although blended sentencing was intended as a substitute measure for the transfer of mid-aged juveniles (ages 15 and 16), according to a survey performed after the introduction of blended sentencing, 47% of juveniles who were likely not to have been subjected to criminal sentencing were, due to blended sentencing, subjected to criminal sentencing. Such a “topsy-turvy” situation is thus now occurring (Document 1, p. 161).

Moreover, blended sentencing in the state of Texas allows imposition within the juvenile court of a maximum 40 years of imprisonment (Document 1, p. 411). Here, one could say that no blended sentencing would be preferable, that the imposition of criminal sentencing due to transfer would in fact be better.

3) Menacing of young-aged juveniles
For young-aged juveniles who have not reached the age where transfer is possible, compared with criminal punishment, blended sentencing in fact enables the imposition of excessively severe sentences.

(4) Slackening of reasonable procedures
Sentences in cases of transfer (remittance) are originally determined within the criminal court based on strict methods of evidence. With blended sentencing, however, due to relatively slack evidential procedures in a juvenile court compared with a criminal court, an extreme argument would be that sentencing can be performed even for what might be called “general delinquency” (so-called “gu-hansei” in Japanese, or a state in which a person is in where it is likely, or there is a fear, that he/she may commit a crime), and longer terms of institutional confinement—compared with those that might be imposed as criminal punishments—are also enabled.

Further, while in criminal courts, immature juveniles who are involved in cases may be considered as lacking the capability to follow court proceedings, in the juvenile court, such capability might not even be called into question; thus, the danger emerges that such juveniles may be forced to serve a longer term of institution confinement than may have been the case with a criminal punishment.

5. Signs of “Blending” Tendencies in Japan
Presented above was an overview of recent trends toward blended sentencing in the United States. Next it will be pointed out signs of blending trends as seen recently in Japan.

Even prior to the revision of the Juvenile Act of 2000, a certain degree of blending already existed in Japan. Examples include, among others, separation in principle for criminal cases where a juvenile is the defendant (Juvenile Act, Article 49), proceedings in criminal cases involving juveniles to be performed according to scientific investigative principles (Juvenile Act, Article 50), and the fact that, in regards to criminal sentencing, punishments for juveniles should be more lenient than those for adults (Juvenile Act, Article 51 ff.).

For certain, it is impossible to make a strict difference—such as that which exists between oil and water—between family courts and criminal courts. Historically, too, originally these were not separate entities, and it can be said that a certain degree of blending was to be expected for the two systems.

Nevertheless, it is too early to speak of a general context for a “blending” in Japan of family courts and criminal courts. In Japan, the borderline between the two court types is still strictly separated, and there has been no slackening of such as there has been in the United States (Document 12, p. 362).

Yet even in Japan, the borders between the two court types have, little by little, become closer together in recent times. For example, it is possible to understand the following, among other facts, as showing how protective sentencing is gradually approaching criminal sentencing: the abolishment in principle of the maximum length of confinement at a juvenile
facility (Juvenile Training School), such that there is no limit to an extension of the confinement period (Document 12, p. 248), the abolishment of the minimum age for remitment (deletion of the provision of Article 20), limitations of leniency for life imprisonment with labor for juveniles (Juvenile Act, Article 51), etc. Meanwhile, one can also understand certain facts as showing that criminal sentencing has become “closer” to protective sentencing, including that it has become possible, even after imprisonment has been adjudicated by a criminal court, for a juvenile to be handled at a Juvenile Training School until he/she has reached a certain age (Juvenile Act, Article 56, Paragraph 3), etc.

6. How Should Blending Sentencing Be Evaluated in Japan?

In Japan, especially since the 1990s, there has been fervent debate regarding the propriety of more severe punishments for juveniles. A simplified picture would divide this debate into two perspectives: one favoring stricter punishments, which supports active remitment of juveniles to criminal courts to be subjected to criminal sentencing, and the other that favors the protective concept, characterized by its “diehard” defense of the jurisdiction of family courts. Since the problem of juvenile delinquency falls into a domain that is strongly influenced by the respective value systems of these two “camps,” the gap between them can be said to be enormous.

A look at America’s history, however, would show the fact that, if one favors the side favoring stricter punishments, then criminal courts are becoming more similar to juvenile courts, and, if one favors the side favoring absolute separation, one is faced with the fact that the juvenile court has gradually begun to show aspects of a criminal court. In the final analysis, both sides are presented with this concrete fact of blending.

In Japan in recent times, too, strong tendencies have been seen towards blending, as protective sentencing and criminal sentencing have moved closer together. Nevertheless, the experiences of the United States are rich in suggestions regarding the numerous extremely dangerous aspects of such blending.

In regards to the investigative and analytical abilities cultivated hitherto in Japan by its family court investigators and specialists at Juvenile Classification Homes, as well as in terms of treatment at its Juvenile Training Schools, Japan can be said to have aspects that are superior even on a worldwide scale (Document 12, pp. 17-20, and Document 10). This has been pointed out as being due to the fact that, in Japan, juvenile procedures are not handled as criminal procedures that have been completely unified and revised from the educational perspective; instead, there exists “a dual system that is considerably thorough” (Document 12, p. 362). The superior aspects of the Japanese system, therefore, can be said to be due to the fact that it is not easy for these two procedural types (criminal and juvenile) to approach each other, and these have not been made to blend together. Stated otherwise, it is none other than due to the fact that both procedural types exist in a dual system, such that protective procedures have been successfully set in a relatively simple fashion such that they are not intermingled with the retributive standpoint—it is this that makes it possible to introduce
pure protective procedures into educational, psychological, and the various other kinds of scientific findings and practices; it is this dual system that can be thought to have been a major driving force in the realization of the superior investigative and analytical abilities of family court investigators and specialists at Juvenile Classification Homes, as well as in the realization of superior treatment at Japanese Juvenile Training Schools.

In terms of this point, Japan’s Juvenile Act is facing a turning point, especially since the passage of the revised Juvenile Act of 2000: aspects of blending have become more prevalent. Still, in terms of the process of its adoption as law, Japan’s Juvenile Act was originally established with an express denial of its positioning as being uniform—i.e., one and the same—with criminal procedures, as this Act was not passed as a special law for criminal procedures. In terms of the actual text of the current Act, it is clear that, under the stipulation of its purpose as giving priority to protection and education (Juvenile Act, Article 1), a system has been established that attempts conformity in this manner with criminal procedures (Document 12, p. 363, and the same Document 12, pgs. 27-28).

Therefore, although in the details of each argument, there may exist certain stipulations that are apparently blended, there must not be any undermining of the total concept that understands and implements the procedures for protective sentencing and for criminal sentencing by relating these in a unified, organic manner under the principles of protection and education.

In this way, into the future as well, there must be an aim and intent to:

1) Firmly hold to the fundamental dual structure that separates protective procedures from criminal procedures, and

2) Implement in a uniform and organic manner both types of procedures/sentencing under the stipulation of purpose that gives priority to protection and education (Juvenile Act, Article 1).

In Japan, there should be no further push towards blending and dilution of the independent dual structure as has been observed in the United States.

Moreover, what is strongly needed today in Japan, where there is an increasing tendency toward stiffer penalties, is an investigation into just how to understand and implement, in a unified and organic manner, criminal procedures in a form whereby the immaturity of juveniles is carefully taken into account, under the stipulation of purpose that gives priority to protection and education (Juvenile Act, Article 1), as well as the actual performance of such an understanding. Only in this way can the original protective concept of the family court be protected, and, only in this way can there be simultaneous preservation of the fundamental dual structure that separates protective procedures from criminal procedures, as well as a unified and organic implementation of such where there is no absolute “cutting off” of one procedural type from the other.

In regards to this issue of implementation of criminal procedures for immature juveniles, already in the United States pioneering engagements have been carried out.

In regards to such engagements in the United States, the present author has already
separately described these elsewhere (Reconsideration of Japan’s Revised Juvenile Act, and Considerations Regarding Juvenile Justice Reform (http://repositories.cdlib.org/csls/fwp/27/), University of California eScholarship Repository); the reader is requested to refer to such.

7. In Conclusion

The United States of America, as evinced in the principles originally underpinning the juvenile court in the Chicago courts in the state of Illinois, was the first country in the world to pioneer a dual structure with separate protective sentencing and criminal sentencing. Today, however, these two sentencing types have been blended, and, stated in the worst way, this has resulted in chaos, vagueness, incoherence, and inconsistencies.

In terms of this point, if one adopts a broad viewpoint, in the United States, it has been pointed out that the backdrop that first led to the rampant usage of the criminal punishment system was the economic downturns since the 1980s plus crises in the social security system, and rather than trying to resolve such through social welfare policies that involve high costs and where the results are indirect, there has been a reliance instead on the simpler and more convenient criminal punishment system, with its lower costs and more direct results (Document 9, pp. 199 ff.).

Here, a negative viewpoint might point out that blended sentencing itself can be called a low-cost, “convenient” measure that attempts a patchwork solution.

It can be stated here that there have been several factors in Japan that can be seen as repeating the recent history of the United States, including a long-term recession seemingly without a bottoming out, the undertones heard of a possible collapse of the social security system, and the worsening of public safety that has occurred against this backdrop, plus the trend towards reliance on the criminal punishment system in response. Certainly, Japan cannot stand aside as a passive, unconcerned onlooker at the experiences in the United States.

So that Japan does not take the easier and more convenient responses, such that it dismantles its dual principle structure that separates criminal law from juvenile law, and loses sight of the principles of protection and education in its juvenile law, the nation must show sufficient prudence and careful concern.

Documents

3. Mark H. Haller, Urban Crime and Criminal Justice: The Chicago Case, American Law and the Constitutional Order: Historical Perspectives [Lawrence M. Friedman, Harry N. Scheiber,
eds.], 1988, Harvard University Press
5. OJJDP Report 2000, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention
10. Jessica Hardung, The Proposed Revisions to Japan’s Juvenile Law: If Punishment is Their Answer, They are Asking the Wrong Question, Pacific Rim Law & Policy Journal, Vol. 9 [No. 1], 2000