“The Kid is a Criminal” v. “The Criminal is a Kid”:

Cultural Impacts on Juvenile Justice in the United States and Japan

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II. Abstract

American and Japanese cultures diverge on a number of features, the most distinct being the value placed on individualism versus solidarity. The focus of this thesis project will be to demonstrate the ways this difference is reflected in current juvenile justice practices and institutions. While the American and Japanese juvenile justice systems were born of the same parent ideal, they have moved in increasingly opposite directions over the past century. I will attempt to explain this divergence in terms of cultural differences inherent in these two societies. While Japan adopted the American system at the start of the twentieth century, maternal protectionism prevented actual implementation of many of the harsher aspects of the American system. Similarly, because different values are stressed during the socialization process headed by families and schooling, incidence of crime varies greatly between Japan and the U.S. The Japanese have internalized the forces restraining people from committing crime, while the comparatively high American crime rate may be due to the importance given to individualism as well as material wealth. Further, when crime is committed by youth in Japan, the reasons for it may be very different than the motives enticing young Americans to participate in similar types of delinquent behavior. As a result, the way children are ushered through the system, and the sentencing practices of each country, vary dramatically. Lastly, the differences in Japanese and American culture have led to the passage of divergent legislation reforming the original systems of protection. While Japan has moved towards harsher reforms in recent years, in practice they continue to stress rehabilitation and reintegration. The United States, however, uses a language of restorative justice, but continues to stress punitive justice and punishment. This study will attempt to draw connections between cultural differences and legal developments, drawing on socio-cultural studies, integral legislative advancements, and sentencing and placement practices.
to explain the extreme divergence that has occurred over the course of a century.

III. Introduction to Topic

My initial interest in this field evolved through my preliminary research; I learned that the Japanese system was originally modeled off of the American system, as it was the first of its kind in the world. However, over time, the two systems have diverged into two completely different systems. Despite some recent legislation restricting the circumstances of how juveniles tried as adults may be sentenced, the American juvenile justice system has become more focused on individual accountability and punishment, while the Japanese system focuses on rehabilitation and protection of youth. Juveniles in the United States are receiving longer sentences and are increasingly tried in adult courts, with the smallest estimates suggesting at least 1% of juveniles being waived to adult courts (Adams, Addie, Firestine, Griffin: 2011, 10). This number is in addition to those who commit crimes that carry automatic transfers such as first-degree murder. Most of these transfers result from crimes against persons, but property and drug offenses are often petitioned as well. Japanese juveniles, on the other hand, are subjected to a much different experience with law enforcement officials. Typically, they are kept in detention facilities for much shorter periods and are then released into the community. Very few juveniles are tried as adults, and this occurs only after a decision is reached by the Family Court.

One argument for the reason divergent legislation has been passed in these two nations is the notion that Japan initially adopted the legal framework of the American system, but kept intact many culturally significant aspects of their original criminal justice system. This allowed for the tradition of maternal protectionism intrinsic to Japanese society to manifest itself through nonpunitive legal reforms (Morita, 2002: 360). While American society stresses independence and self-reliance as highly important characteristics crucial to development, leading to the
adoption of legislative reforms emphasizing responsibility and punishment, Japanese culture stresses group solidarity and self-control, contributing not only to a vastly lower crime rate, but a system emphasizing rehabilitation and reintegration of juvenile delinquents into society. While American individualism shapes a system of personal accountability, encouraging youth to take responsibility for their actions and to make their own reparation, the Japanese tend to frame juveniles differently, as in need of societal intervention and reintegration. Rather than place the blame entirely on the juveniles, the entire community must evaluate why the youth resorted to crime and what they can do to prevent future recidivism. It is society as a whole who is responsible for resocializing these kids and helping them become productive members of society; all members work together to raise the child and instill in them the dominant values at the core of Japanese culture.

IV. Methodology

I have conducted historical comparative research, which is a longitudinal study of two countries over a specific period of time, in my case from 1899 to 2013. Data from more than one time period and more than one nation is critical for my comparison. The reason I conducted comparative research rather than simply completing a longitudinal study of one country is the fact that “a study of processes within one nation may be misleading if important processes within the nation have been influenced by social processes that operate across national borders” (Schutt, 2012: 400). Only tracking the progression of one country, without looking at what appears to be a similar process in the opposite direction in another country, may lead me to make false conclusions or lead my research in a direction that shields me from finding many significant pieces of information crucial to proving my hypotheses.

Japan and the United States are often compared as they are both modern, industrialized
democracies, and thus I believe it is interesting to note how, although they have developed similarly in many respects, there are some aspects of these two nations that have not followed this pattern, resulting in juvenile justice systems which are completely incompatible. Historical comparative research is typically qualitative, but I have used quantitative studies as well, which I discuss below. I used a mixed methods approach, employing historical research, socio-cultural research, and quantitative and qualitative studies to investigate my hypothesis. My research is case-oriented in that I am looking only at the institutions of the juvenile justice systems in Japan and the U.S. and detailing how these two systems have strayed from their original functions and intent. Many scholars claim that when conducting comparative research, the most important features of comparison are institutions, which is why my focus is narrowed to the juvenile justice systems of both countries. In fact, “institutional theorists propose that institutions, and more specifically their core values, tend to determine social behavior” (Cummings, 1999: 241). This proposal is interesting because my hypothesis puts forward the opposite argument, that social behavior and the social values that initiate this behavior shape the function and design of particular institutions in society.

Research Design

A. Historical Overview and Comparison

I will begin my project with a detailed narrative of the development of both the American and Japanese juvenile justice systems. Using the historical process research method highlighted by Schutt, which “extends historical events research by focusing on a series of events that happened over a longer period of time... allow[ing] for a much more complete understanding of historical developments than is often the case with historical events research,” will enable me to lay out, in sequence, the changes over time that have led to the present systems and practices
My timeline will begin in 1899, with the initial creation of the American juvenile justice system, noting the reasons for why development of a separate system for juveniles was perceived as needed in the first place, as well as why Japan adopted this model when constructing their own juvenile justice system despite differences in criminal justice procedures and practices of the time. Currently, most scholars contend that the Japanese legislation and policy writers simply had no other model to follow, and thus the American design was the only one they could look to for guidance in constructing their own model.

B. Modern Day Comparison

Once the two systems of Japan and the United States are placed in this historical context, a comparison of the two systems as they stand today will be provided. A look at the different trial systems, typical sentencing practices, and differences in placement facilities will help paint a picture of the differences that exist today. Further, there seems to be a disconnect between the language of legislative reforms and actual practices in the two countries, albeit in opposite ways. In the United States, the discourse of many recently reformed state policies is one of restorative justice, however when it comes to putting these policies into practice, the states fall short of enacting programs that truly reflect the spirit of restorative justice.

In Japan, the problem is quite different. A media-led moral panic, brought upon by intense, sensationalized coverage of a few violent crimes committed by youth, has led to public support of a ‘get-tough’ movement, as demonstrated by the 2000 and 2005 reforms to the Shonenho, or Juvenile Law. These reforms were the first to alter this law since its creation in the post-WWII period. However, while one would expect a dramatic rise in the number of incarcerated youth to accompany these punitive reforms, in fact, juvenile detention rates have
dropped. The ‘get-tough’ reforms were extended to the adult criminal justice system as well, however, the rates of adult incarceration have indeed increased, signifying a difference in the juvenile and adult trends.

C. Psychological and Socio-cultural Studies

The most important part of my project, will be an exploration of the reasons for current differences granted the initial similarities. Family socialization plays a critical role in reproducing the cultural differences I believe are the cause of these juvenile justice legislative reforms. In addition to family values learned and instilled through socialization, research about socialization into the community at large will be analyzed. To make sure my conclusions are accurate, I will examine multiple studies conducted, ensuring results are consistent. By looking at various sources concerning particular core values and beliefs I believe to be distinct to each culture, I will be able to draw conclusions about their presence and importance to each society. Once that is established, I will attempt to place these values in the framework of legislative policies, linking them as independent and dependent variables.

A large part of socialization occurs outside of the family, in schools, so I will explore the ways schools promote the fundamental values of the two nations. Schools in Japan promote collaboration and teamwork, and students are taught to take responsibility for the academic failures of their peers. In the United States, schools often encourage students to work on their own and complete tasks on their own. Surveillance and social control occur in large part in educational institutions, and I will look at the different approaches taken giving attention to both similarities and differences in the two countries. These differences may contribute to disparities in the actual crime rates, as the Japanese, who have cultivated high levels of self-control through group socialization and surveillance, tend to conform to criminal laws. The temptation to break
the law is often mitigated by other members of the group and conformity to strict rules. Further, Japanese social control mechanisms have resulted in internalized forces restraining people from committing crimes. American youth lack these sentiments, and the values of independence and individualism they internalize instead may lead them to commit crimes that result in their exposure to the juvenile justice system in the first place.

Japan is an extremely collectivist culture, placing emphasis on the community over the individual. As a result, when youth commit crimes, it is seen as the responsibility of the entire community to resocialize the child and help reintegrate them into society. In contrast, the United States is much more concerned with individualism, emphasizing the path to success through personal struggle and hard work. While notions of self-control are imbedded in the minds of their Japanese counterparts, American children learn to develop a strong sense of self and personal identity. Thus, when they commit a crime, they are expected to shoulder the blame and accept the punishment for their mistake. I will attempt to connect these differences in cultural values to the differences in the juvenile justice systems. Because children are framed differently, the function of the two juvenile justice systems differ and children receive different treatment and sentencing as a result.

V. Historical Comparison

**History of Juvenile Justice Systems**

**A. United States**

With the creation of the separate juvenile court system in 1899, a strong emphasis was placed on neglected and abandoned youth. The adoption of the ideal of *parens patriae* allowed the state to intervene on behalf of these children and take them in, in an attempt to protect them from the neglect they faced at home. The state was able to take over the role of parent, making
decisions in the best interest of the child. As a result, both children who had participated in criminal activity and those who were in need of attention as a result of absent parents were placed in reform schools and juvenile detention facilities. Eventually, however, “major problems developed as a result of this combination of delinquent, dependent, and neglected children… under the same rubric” (Vito, 2011: 19). To help differentiate between neglected and delinquent children a new category of ‘status offenders’ was created, designating the group of children who had to be cared for and looked after under the wing of the law. Status offenses are defined as acts deemed illegal only for juveniles, such as truancy or running away from home. These types of offenses are not applicable to adults. The courts placed a heavy emphasis on protecting these “at risk” children and preventing future criminal offenses.

In 1967, juveniles were afforded greater rights in the decision In re Gault, forever altering the landscape of juvenile justice. Gerald Gault, 15 at the time, was arrested for prank calling a female neighbor with a friend while on probation for a minor property offense. The two were identified to police by the neighbor and were subsequently arrested and detained. The witness never appeared at the adjudication hearing, yet Gault was remanded to a training school for the remainder of his minority. Had a legal adult been charged with the same crime, the maximum sentence would have been either a $50 fine or two months in jail. Gault’s attorney filed a writ of habeas corpus claiming that his client’s constitutional rights had been denied. “The Court ruled that in hearings that could result in commitment to an institution, juveniles have the right to notice and counsel, to question witnesses, and to protection against self-incrimination” (NCJRS, 1999: 90). The Court argued that Gault was punished rather than helped by the juvenile court, undermining its original intent and violating the due process clause of the 14th Amendment. Further, “the Court explicitly rejected the doctrine of parens patriae as the
founding principle of juvenile justice, describing the concept as murky and of dubious historical relevance” (NCJRS, 1999: 90). No longer were juveniles treated as wards of the state, and while their rights expanded, their protection and framing as in need of care and rehabilitation were replaced with the notion that they, with the power of their attorney, bore the responsibility of showcasing their innocence.

Three years later, Samuel Winship, age 12, was arrested and adjudicated delinquent after a store owner claimed to see the boy running out of the store immediately before a woman noticed she had been robbed of $112 from her purse. While other witnesses claimed the store owner was not in a position to physically see the boy take the money, the courts ruled based on the idea of a “preponderance of evidence” rather than the standard of “beyond a reasonable doubt” used in the adult courts. The reasoning behind this was that juvenile courts were designed to save children rather than punish them, and thus the juvenile courts were not required to enforce the same standards as adult criminal courts. Upon appeal, however, the Supreme Court rejected this argument and ruled that proof “beyond a reasonable doubt” is required in all juvenile hearings. This was a major victory for juvenile rights and a further step away from the traditional doctrine of parens patriae.

In 1971, however, the courts refrained from granting juveniles jury trials, maintaining that juvenile and adult criminal trials are fundamentally different, and that the introduction of a jury to juvenile delinquency cases would detract from the typically more informal environment of juvenile trials. In McKeiver v. Pennsylvania, the youth in question was charged with robbery and larceny. He met with his lawyer very briefly before the trial. His attorney’s request for a jury trial was denied by the court, and McKeiver was placed on probation. The U.S. Supreme Court ruled that jury trials in juvenile court were not required by the due process clause of the 14th
amendment. “The impact of the Court's Gault and Winship decisions was to enhance the accuracy of the juvenile court process in the fact-finding stage. In McKeiver, the Court argued that juries are not known to be more accurate than judges in the adjudication stage and could be disruptive to the informal atmosphere of the juvenile court, tending to make it more adversarial” (NCJRS, 1999: 90).

As the juvenile court evolved over the years, there emerged two competing theories for dealing with all juvenile offenders, diversion and intervention. Diversion strategies aim to prevent youth from entering the system at all. Diversionists argue that the harms of incarceration outweigh any benefits of locking up a youth, and attempt to protect the youth by preventing their sentencing to a detention center. They see immaturity as a major factor contributing to juvenile crime and thus believe the natural process of growing up in a community setting will solve most problems involving youth crime. In essence, diversionists argue that, left to their own devices, children will grow out of crime as they mature.

Interventionists, on the other hand, argue that without compulsory programs and punishments, youths adjudicated delinquent will resort to crime once again, and thus the government must intervene into the lives of these kids before it is too late. Their strategy is to step into the lives of kids who are at risk of developing into antisocial or harmful adults to change the course of their lives in a helpful and prosocial way. They advocate harsh punishments and mandatory rehabilitative programs upon release.

Interventionist strategies gained momentum in the 1960s, resulting in a sharp increase in the number of youth sentenced to work camps. However, diversion strategies continued to retain strong support, as “community-based programs, diversion, and deinstitutionalization became the banners of juvenile justice policy in the 1970s” (NCJRS, 1999: 88).

It was not until the 1980s that the pendulum began to swing in favor of interventionist,
law and order strategies. A misinformed, but powerful, perceived increase in the rate of serious juvenile crime resulted in an increase in punitive laws. In particular, the 1990s demonstrated a time of unprecedented change, as state legislatures began to crack down on juvenile crime. All but three state legislatures enacted reforms making juvenile justice policy more punitive than before. These reforms made youth transfer to adult court easier for prosecutors and increased the standard sentencing lengths of many crimes. The figure below shows the changes each state made to their juvenile justice policies.

Figure 1: Reforms in U.S. State Legislatures’ Juvenile Justice Policy 1992-1997

This resulted in an increased tendency to incarcerate youths, questioning the rehabilitative nature of the American juvenile justice system. The “Get Tough” movement

featured high rates of juvenile sentencing as adults, and thus placement in adult prisons. Despite the fact that juvenile transfer laws have been shown to fail in deterring crime, and some research even suggests that transfer may increase subsequent offending, juvenile transfer rates continue to grow as the media continues to demonize these youth offenders (NCJRS, 2011: 26). Regardless of the fact that most interventionist programs have been celebrated failures, the current decade continues to implement such programs, for lack of realistic and effective alternatives. The “Get Tough” movement also supported the practice of sentencing juveniles to the death penalty, which was only found unconstitutional in the United States in 2005 (Vito, 2011: 26-29).

This case, Roper v. Simmons, officially ended the execution of those who committed their crimes before the age of 18. While this appears to be a monumental step away from the punitive treatment of juveniles, it is interesting to note that the Supreme Court was closely divided, ruling 5-4 in favor of abolishing juvenile capital punishment. After 1990, the only other countries that continued to execute juveniles were Iran, Saudi Arabia, Pakistan, China, Nigeria, Yemen, and the Democratic Republic of Congo. Prior to the Simmons ruling, each of those countries had “either abolished capital punishment for juveniles or made public disavowal of the practice. In sum, [the justices of the majority opinion argued] it [was] fair to say that the United States [stood] alone in a world that ha[d] turned its face against the juvenile death penalty” (NJDC, 2012: 1). Multiple international treaties had previously abolished the practice of juvenile capital punishment, and thus it was further argued that “the overwhelming international rejection of the juvenile death penalty confirms the emerging consensus against imposition of this sentence and is relevant to the Eighth Amendment evolving standards of decency analysis” (NJDC, 2012:1). Thus, while this decision may be viewed as a victory for diversionists, alternatively it may be construed as a small concession for interventionists coming under international pressure
to abolish this practice.

The most recent Supreme Court case, also decided by a 5-4 vote, ruled that mandatory life-without-parole sentences handed down to juveniles convicted of homicide are unconstitutional. The two cases before the court, *Jackson v. Hobbs* and *Miller v. Alabama* involved juveniles convicted of homicide at the age of fourteen. “In neither case did the sentencing authority have any discretion to impose a different punishment. State law mandated that each juvenile die in prison even if a judge or jury would have thought that his youth and its attendant characteristics, along with the nature of his crime, made a lesser sentence (for example, life with the possibility of parole) more appropriate” (Dahl, 2012: 1). Because homicide often carries a mandatory sentence for those convicted, and these youth were tried in adult courts, their conviction alone determined their sentence.

This ruling applies to all youth under the age of 18 at the time of their crime, and does not limit life sentences, so long as the possibility of parole is available. The Supreme Court decision, however, was unclear about whether this ruling will apply only to future cases, or if the approximately 2,570 people currently serving life without the possibility of parole sentences for crimes committed before the age of 18 will be eligible for retrials (Dahl, 2012: 2).

Pictured below is a timeline of the most critical Supreme Court cases to youth justice between 1966 and 1989, beginning with *Kent v. United States* (1966), which preceded Gault, and ending with *Stanford v. Kentucky* (1989), setting the minimum age for juvenile capital punishment at age 16, and their effect on the juvenile justice system.
B. Japan

Japan was greatly influenced by the American system in 1907, quickly adopting the idea of *parens patriae* as a method for dealing with juveniles through the arm of the law. They too realized that children tried for criminal cases are fundamentally different from their adult counterparts, and must be treated as such. As previously mentioned, this idea granted the state the “right and responsibility to take control over children from [their] natural parents when they proved to be unable to meet their responsibilities or when the child was a problem for the community” (Vito, 2011: 10-11). Under this doctrine, a child in need became a ward of the state, which assumed care and control of the child for a given period.

In early 1900, Japan enacted the Reformatory Act, requiring compulsory housing and correction of children prone to committing misdemeanors. Rather than focus solely on the protection of children, the Japanese stressed the importance of rehabilitation of its youth as a central goal of its juvenile justice system. Unlike the American system, which included the care
of runaways, pregnant teens, and neglected youth, the Japanese system limited its jurisdiction to
criminal and semi-criminal offenders in 1922, with the passage of the Taisho Juvenile Law. This
law created the Juvenile Inquiry and Determination Office, or Shonen Shimpansho, which
specialized in protective measures for juveniles under the age of 18. However, most juveniles
sent to this office were either released before a formal hearing, or released on probation. In fact,
in 1942 “fewer than a thousand offenders between fourteen and eighteen years of age were
committed to juvenile prisons, which were designed to provide ‘educational punishment’ and
rehabilitation” (Morita, 2002: 366). These prisons had more in common with detention facilities
than present conceptions of juvenile prisons. Juvenile crime was not only a reflection of the
youth, but of the failure of the entire community to successfully socialize this youth and
internalize in them the values at the core of Japanese culture. Rather than incarcerate its youth,
Japan overwhelmingly released them back into the community, which took on the responsibility
of rehabilitating the delinquent youth and reintegrating them successfully into society.

However, with their defeat in World War II, Japan was forced to adopt the American
ideal of *parens patriae* even more thoroughly than at the start of the century. Article 1 of the
Juvenile Law of 1948, drafted under the influence of the U.S. occupation forces, states the
purpose of the juvenile justice system to be “‘the wholesome rearing of juveniles’ and ‘to carry
out protective measures relating to the character, correction, and environmental adjustment of
delinquent juveniles’” (Fenwick, 2006: 148). Any person under the age of 20 was considered, by
law, a juvenile, and it was argued that youth under the age of 14 could not be held criminally
liable for their acts. Japanese society held a “‘distinctly modern conception of childhood and
adolescence, based on notions of innocence, malleability, and dependence. Youth justice was
designed to protect juveniles both from the social environment that had produced their
delinquent behavior and from the possible harmful effects of the youth justice system itself;” (Fenwick, 2006: 148). When a crime deemed a hearing necessary, the protection principle dictated that the offender be shielded from the potentially stigmatizing effects of such a proceeding.

Unsurprisingly, the Japanese people were less than thrilled that their juvenile law was crafted under influence of the allied forces, forcing them to adopt many of the same elements as the U.S.’s Standard Juvenile Court Act of 1948. Thus, a movement to reform this juvenile law began in 1952, marking the end of the Allied occupation of Japan. Unfortunately, nothing proposed was widely accepted by Japanese society, and thus virtually no progress was made for over a decade. Then, in 1967 a landmark case in the United States was settled, *In re Gault*, granting due process protections to juvenile offenders. This decision spelled the end of *parens patriae* in the United States, as juveniles were now afforded more rights and were given more responsibility in their own adjudication hearings. The state no longer took over the role of guardian, and the impact of this verdict reached Japan almost immediately. However, while attempting to ride the tailwinds of change in American juvenile law, the ministry ran into opposition from the Japanese Supreme Court, and a compromise was not reached until 1977. However, this never actually ended in an amendment, and the law of 1948, strict *parens patriae*, became entrenched in postwar Japan. *Parens patriae* was embraced in mid-twentieth-century Japan even more strongly than in the U.S., its birthplace.

The current juvenile justice system continues to stress many of the elements of this 1948 law, though a series of reforms have been passed over the past decade. Falling in line with the United States, a “Get Tough” movement emerged in Japan in the late 1990s, resulting in two major reforms to Japan’s juvenile law in 2000 and 2005:
“Critics of youth justice drew upon widespread public anger to discredit a law that was seen as out of touch with popular attitudes towards criminal wrong-doing, as well as the realities of youth in 1990s’ Japan…In this sense, the dominant rhetoric in public discussion was one of penal populism rather than due process, and it was the protection principle that was identified as the key issue that needed to be addressed.” (Fenwick, 2006: 151)

This public outcry for harsher penalties resulted from the extensive media coverage of a few high-profile, violent juvenile offenses. The media’s portrayal of these juvenile offenders contributed to greater public safety concerns, triggering support of get-tough policies for future offenses of the same violent nature. “A traditional concern with the welfare of youth offenders was supplemented by a new emphasis on punishment, the rights of the victim, and parental responsibility” (Fenwick, 2006: 146-147). The 2000 revisions, enacted in April of the following year, lowered the minimal age limit a juvenile could be criminally prosecuted from the age of 16 to the age of 14; the Family Court agreed in principle to transfer cases of youth who committed homicide or another offense that resulted in death, though reality reveals this practice to be extremely rare. The maximum period of pre-hearing detention for juvenile offenders was extended from four weeks to eight weeks. Finally, the victims of youth crime were for the first time afforded the opportunity of making a statement during the hearing.

Additionally, victims were given access to relevant court records, allowing them to learn the final verdict, which previously was not a right granted to them or their families, though they continue to be banned from attending the hearings in their entirety. Despite these seemingly penile reforms, the police or public prosecutor is still legally bound to send every case to the Family Court first, “which has resources for social investigation and social casework” (Kuzuno,
In 2007, the Japanese Juvenile Law (Shonenho) was once again amended, demonstrating increased support of the “get-tough” policies introduced in the 2000 amendment. The amendments were adopted on May 25, 2007 “at the plenary session of the House of Councilors. The draft amendments had been submitted to the 164 session of the Diet in March 2005 and became law during the present session after some modifications” (Hurights Osaka, 2007: 1). These revisions make it possible for juveniles as young as twelve years old to be sent to juvenile training schools, where previously the age limit for this type of sentencing was set at fourteen (Article 24 (1)). Further, Family Court judges now have the power to sentence youth in violation of their parole to serve their remaining time in a juvenile training school (Article 26 (4)). This measure is to be taken for repeat offenders or those who have seriously broken the conditions of their parole. The first time parole is broken the juvenile will receive a warning, but should they breach the conditions of their parole a second time, the judge may send the youth to either a juvenile home for education and training or a juvenile reformatory. The police powers of investigation were also expanded by the adoption of this amendment. “While the police investigation has been carried out on a voluntary basis if the juvenile is below the age of criminal responsibility (14 years), the amended Law introduced the statutory power of the police to conduct investigation in such cases as well, including through summoning the juvenile or his/her guardian and through confiscation” (Hurights Osaka, 2007: 2). The final provision of this amendment added a statute excluding youth likely to commit crime in the future from this increased police investigation, and dictated that youth subject to investigation shall not be forced to answer questions during interrogation.

Regardless of these penal reforms, the ultimate function of the Japanese juvenile justice
system continues to be the protection and rehabilitation of youth offenders. Although the juvenile law has, in many aspects, gotten harsher, it explicitly “states that this is to ‘foster an awareness of social norms and promote the sound upbringing of the juvenile, by clearly indicating the principle that even juveniles will be the object of criminal proceedings’” (Ryan, 2007: 161).

Youth are still viewed as in need of nurturance and assistance, but part of the process of maturing includes being held accountable for one’s mistakes. Regardless, the Japanese juvenile justice system continues to place minimal emphasis on punishment; when punishment is deemed necessary, every attempt is made to place it in the framework of rehabilitation.

VI. Present-Day Analysis

Juvenile Court Hearings Today (Inquisitorial v. Adversarial)

The Japanese and American approaches to determining a guilty verdict during court proceedings are very different. The United States implements an adversarial system of trial, while the Japanese system is inquisitorial in nature. “Under the adversary system, the judge serves as a kind of neutral referee in the criminal justice process, relying on the prosecution and defense attorneys to present evidence at trial” (Ginsburg, 2004: 1). The prosecution and defense are positioned against each other, and justice is served when the most effective adversary is able to convince the judge or the jury that their position and argument is the correct one. In an inquisitorial system the judge plays an active, rather than passive, role in the search for the truth. All parties of the court work together to investigate the case and determine the sequence of events leading up to the commitment of the crime in question. Unlike in an adversarial system, prosecutors are not required to submit exculpatory evidence to the defense and hearsay evidence and illegally obtained evidence are often allowed. However, the American adversarial system has its flaws as well, most importantly the inherent inequality in the fact that similar cases are not
always treated as such as a result of the different quality of lawyering people from various social classes can afford. “This forms a great contrast with Japan, where legal actors place paramount value on treating like cases alike” (Ginsburg, 2004: 3). No formal public defender system exists in Japan and very few defendants deem it necessary to hire a lawyer to represent them during their trial, regardless of class. Sometimes, a local community member will represent a child during their trial, but these benevolent citizens are not trained in legal defense.

In the United States, adversarial trials contribute to the growth in punitive sanctions rather than rehabilitative ones. Although the language of the juvenile and adult courts is different, the general trial structures are effectively parallel to one another. Further, in adversarial systems, defendants are given more rights than those tried in inquisitorial systems. Because youth are afforded many of these rights in their own delinquency hearings, they are framed as capable of assuming responsibility for their actions and deserving of whatever punishment the court sees fit to hand down.

Inquisitorial systems such as Japan’s, in contrast, afford defendants fewer rights. The youth who are tried are thus framed as incapable of assuming full responsibility. While in the United States the outcome focuses on the welfare of society at large, Japanese sentencing practices focus on the need of the particular juvenile. Fewer rights are given as an act of protection; they are a shield from strict penalties and harsh prison sentences. Before beginning discussion of the different trial structures, however, it is important to note that both the U.S. and Japan tend to handle many cases informally, before they reach the trial stage. When crimes are committed that do not warrant a harsh sentence to correct, youth are diverted out of the system. Typically these youth receive parole, though it is not uncommon for them to receive no sanction at all. This serves to protect the youth from the potentially harmful effects of
trial, adjudication, and placement in a juvenile facility. Juvenile hearings are reserved for repeat offenders and offenses deemed serious enough to merit them.

A. Juvenile Trials in the United States

In an attempt to further separate the juvenile court from the adult criminal court, the drafters of juvenile law doctrine created an entirely new language regarding the different steps of juvenile court procedure. This was intended to reiterate the idea that juvenile offenders are fundamentally different from adult criminal offenders. Once juveniles are arrested by law enforcement, they are taken to the courthouse, where they are either petitioned delinquent or released. Discretion lies in the hands of the probation officer and prosecutor; no petition is filed at intake unless these two actors agree on it. After a juvenile is petitioned delinquent, they are typically sent to a detention facility, where they await their trial. There is no bail system in the juvenile courts, and thus the detention centers are mostly front-loaded, with many kids detained before they even see a judge. An adjudicatory hearing follows. If a juvenile is adjudicated delinquent, it means they have been found guilty of whatever crime they were charged with. Instead of a sentencing hearing, they attend a dispositional hearing, which is essentially identical to its criminal court counterpart, and a sentence is handed down by the judge. Juvenile court proceedings are not open to the public in most jurisdictions in the United States, in an effort to protect many private details about a child’s life and background that may come out during the trial. Recently, however, some jurisdictions have begun to open these trials to public viewing, creating an atmosphere typical of a criminal court rather than a traditional juvenile court. Pictured below is a flow chart of the American juvenile justice system, detailing the entire process from initial contact with law enforcement through adjudication and placement of the juvenile.
B. Juvenile Trials in Japan

In Japan, the police generally refer juvenile cases directly to a family court if the offense is liable for mere fines or a lesser punishment. If the offense is serious, requiring greater legal sanctions, the case is handed over to the public prosecutor, who often conducts a thorough investigation before remanding it to a family court. When the juveniles are aged 14 or older, but are under 20, and if protective measures under the Child Welfare Law are considered appropriate, the case is sent to a welfare or child guidance center. These centers are nonpunitive in nature, focusing almost exclusively on education. However, if protective measures under the Juvenile Law, dealing mostly with criminal or violent offenses, are deemed necessary, the case is transferred to a family court. The Family Court Probation Officers “utilize their expertise in psychology, sociology, pedagogy, etc., and call the juvenile, the guardian, or anyone else concerned to the court office for interview about the circumstances or psychological tests. They
also investigate the activities, personal history, personality, environment, etc. of the juvenile by, for example, visiting the juvenile's home” (“The Japanese Justice System,” 3). When the investigation is concluded, the family court decides whether or not it is possible or appropriate to commit the case for a hearing. If not, the case is immediately dismissed. If a hearing is deemed appropriate, the court renders a decision of commencement of a hearing. All hearings involving juveniles are closed to the public and media in Japan out of respect for the youth’s privacy. In fact, not even the victims are allowed to be present during the most of the trial, and until recently, were not given the opportunity to make a statement against the juvenile offender either. Even the public prosecutor must receive special permission from the family court judge before he or she is allowed to attend the hearing.

Further, because there is no formal public defender system in Japan, most juveniles do not hire an attorney. In fact, only about one percent of juvenile cases include the presence of a defense attorney. “In the hearing, an examination is conducted on the presence and the details of the delinquency as well as how much protection the juvenile requires. The judge determines the disposition of the juvenile based on the results of the evaluation or the hearing examination” (“The Japanese Justice System,” 3). Probation is often employed as an alternative to incarceration; as in the United States, it is the most common sentence handed down. When more severe measures are deemed necessary, the youth is often sentenced to a juvenile training school, which aims to educate and rehabilitate the delinquent youth so that they may lead a successful life upon release. Only a very small number of delinquent youth are referred to the public prosecutor, prosecuted, found guilty, and sentenced to juvenile prisons, with most averages suggesting numbers as small as forty-two per year. In 2002 approximately 371 juveniles were sent to the public prosecutor for criminal prosecution, but only a fraction of these juveniles were
found guilty and detained (Kuzuno, 2004: 3). Even when a youth is sentenced by a criminal court judge, however, they will still be incarcerated in a juvenile prison until they reach the age of twenty-six, at which point they are transferred. The graph below visualizes the different alternatives, and their frequency in Japanese family court, while the table helps to quantify final disposition by the family court. It is clear that diversion is the main strategy for dealing with youth offenders, as most cases are dismissed either immediately, or before or after a trial.

Figure 4: Disposition in Family Court (Japan, 2000)


The major reason for this trend is the reluctance of family court judges and probation officers to refer juveniles to trial. They believe most problems may be solved in a community setting, rather than in isolation. No juvenile may be tried without a prior decision given from the Family Court, which focuses sentencing on rehabilitation and child welfare and protective measures.
Figure 5: Final Disposition of Juvenile Non-Traffic Offenders by the Family Court

<table>
<thead>
<tr>
<th>Year</th>
<th>Total</th>
<th>Transfer to the Public Prosecutor</th>
<th>Probation</th>
<th>Welfare Agency</th>
<th>Correction</th>
<th>Total</th>
<th>Dismissed</th>
<th>Dismissal without Hearing</th>
<th>Dismissal after Hearing</th>
</tr>
</thead>
<tbody>
<tr>
<td>1980</td>
<td>14,364</td>
<td>3,139</td>
<td>398</td>
<td>1,251</td>
<td>3,268</td>
<td>80</td>
<td>2</td>
<td>12.2</td>
<td>6.1</td>
</tr>
<tr>
<td>1981</td>
<td>14,509</td>
<td>3,026</td>
<td>398</td>
<td>1,247</td>
<td>3,268</td>
<td>80</td>
<td>2</td>
<td>12.2</td>
<td>6.1</td>
</tr>
<tr>
<td>1982</td>
<td>19,134</td>
<td>4,854</td>
<td>490</td>
<td>1,206</td>
<td>4,372</td>
<td>80</td>
<td>2</td>
<td>12.2</td>
<td>6.1</td>
</tr>
<tr>
<td>1983</td>
<td>13,712</td>
<td>328</td>
<td>340</td>
<td>1,066</td>
<td>3,335</td>
<td>80</td>
<td>2</td>
<td>12.2</td>
<td>6.1</td>
</tr>
<tr>
<td>1984</td>
<td>14,273</td>
<td>371</td>
<td>405</td>
<td>1,083</td>
<td>3,064</td>
<td>80</td>
<td>2</td>
<td>12.2</td>
<td>6.1</td>
</tr>
</tbody>
</table>

(2002 Number)

Homicide 47 6 2 1 33 1 0 0
Robbery 1,524 42 4 597 5 564 2 66 62
Burglary 1,963 71 91 3,055 53 392 20 2,440 1,681
Assault 839 6 1 173 2 18 3 236
Extortion 4,569 21 21 1,603 15 316 5 3,003 1,135
Larceny 44,573 108 180 8,041 18 1,967 49 7,342 26,882
Embezzlement 10,104 1 28 968 2 27 5 1,000 8,586
Other Fraud Crime Offenses 5,682 52 75 1,542 10 402 22 1,206 2,986
Statistical Drug Control Law 612 12 11 225 2 317 1 28 10
Prostitution and Solicitation Control Law 2,678 15 45 806 11 154 1 756 832
Other Special Law Offenses 1,694 25 37 571 0 54 5 358 1,044

Table 2: Final Disposition of Juvenile Non-Traffic Offenders by the Family Court

Note: The number does not include the number of transfers of reference for judgment between courts and cases that ended in pre-hearing without requiring the case information sheet.

http://www.ritsumei.ac.jp/acd/cg/law/lex/rlr22/KUZUNO.pdf

Pictured below is a flowchart of the Japanese Juvenile Justice System:

Figure 6: Japanese Juvenile Justice Flowchart

http://www.ritsumei.ac.jp/acd/cg/law/lex/rlr22/KUZUNO.pdf
Japanese and American juvenile detention facilities are organized very differently, leading to the conclusion that they serve different functions in the two countries. American juvenile facilities have, in recent years, “tended to assume more of the character of adult jails, with larger capacities, bigger housing units, and increasingly restrictive construction materials and hardware” (McMillen, 2002: 8). As a result of a lack of resources, many facilities focus on creating a secure facility that is inescapable, rather than cultivating an environment of rehabilitation and education. Many juveniles in custody are merely awaiting trial, and may not require secure confinement; community-based programs may be enough to reform the youth in question. Regardless, they are held in these detention facilities, often for months at a time, for lack of alternative programs of surveillance leading up to the trial. Probation is often received after a trial, or as a condition of release.

However, because of a pervasive fear of many Americans that children who commit violent offenses will be released from prison at an age that allows them to continue their criminal career, many children in the United States have been receiving excessively harsh sentences in recent years, in an attempt to keep these so-called youth superpredators behind bars much longer than their crime requires or deserves. They are punished not for their actual conduct, but for what they may potentially do in the future. In 2002, “there were an estimated 2,225 youth under age 18 serving sentences of life without parole” (NCCD, 2002: 3). Resources for rehabilitation are not often employed on these youth as they will never have the option of healthy reintegration into society. They are detained to isolate them from society at large; their cells are simply holding units for them.

Further, the past twenty years have seen a sharp increase in the number of juveniles
waived out of the juvenile system and transferred to adult criminal court, despite a decrease in judicial waiver. “The number of delinquency cases judicially waived to criminal court grew 91% between 1985 and 1994 and then declined 45% through 2009” (OJJDP, 2009: 1). However, judicial waiver is only one method of transferring a youth to criminal court. In fact, most states have a variety of different ways to try youth as adults, including judicial waiver, prosecutorial discretion, statutory exclusions, and blended sentencing practices. “Juvenile waiver and transfer provisions have a tremendous impact on a young person's life. Prosecution in criminal court exposes juveniles to the same penalties as adults. They may face a life sentence, incarceration in State prison, and a permanent criminal record with attendant disabilities” (OJJDP, 1996: 4).

Youth sentenced as adults are often placed in the same prisons these adult offenders are committed to. “The number of youth under age 18 in adult jails sharply escalated through the 1990s to a high of almost 9,500 in 1999 and has since leveled off to an average of just over 7,200 since 2000” (NCCD, 2002: 3). In fact, “according to the most recent ASJ, at midyear 2009 the nation’s jails held a total of 7,220 inmates who were younger than 18, including 5,847 who had been tried or were awaiting trial as adults—less than 1% of the total jail population” (NCJRS, 2011: 23). Further, during this same period, “the National Prisoner Statistics Program, which collects one-day snapshot information on state prison inmates, counted a total of 2,778 inmates younger than age 18 in state prisons nationwide” (NCJRS, 2011: 25). Youth sentenced to adult facilities are not separated from adult criminal offenders, undoubtedly creating an environment much less conducive to rehabilitation and continued education than even the worst juvenile facility.

The decrease in judicial waiver is in no means paralleled with a decrease in over all juvenile transfer trends, for while this method is used less frequently, others are quickly gaining
popularity. Nearly 14,000 transfers were calculated in 2007, but data from 29 states is missing, thus grossly underestimating the total number of transfers that year. “Jurisdictional age laws may ‘transfer’ as many as 175,000 additional youth to criminal court because in 13 states, youth become criminally responsible before their 18th birthdays” (NCJRS, 2011: 21). The transfer options available to each state are pictured below.

Figure 7: Transfer Procedures of the 50 States

https://www.ncjrs.gov/pdffiles1/ojjdp/232434.pdf

In fact, some states make waiver mandatory once certain criteria have been met, such as particularly violent offenses, capital crimes, and certain property and drug offenses.
Further, there are both publicly and privately operated facilities available for placing delinquent youth. Unlike the adult system, private facilities have existed in the juvenile justice sector since its inception, and thus differences in quality span a much smaller scale than those in the adult system. On average, however, private facilities are much smaller, and have stringent admissions processes. “These more extensive evaluations may provide private facilities with the opportunity to disallow a juvenile admission into their facility for failure to meet specified program criteria (e.g., juveniles with a history of violence), a luxury that is not often afforded to public facilities” (Armstrong, 2002: 39). Private facilities are more likely to hold youth incarcerated for property offenses, while the youth in public facilities are more likely to have committed crimes at a younger age, have more prior offenses, and have much higher gang involvement.
While the typical routine varies from facility to facility, the sequence of events is generally pretty standard. The facilities are often made of concrete, and tall walls form the circumference, preventing escape. Bright lights wake the residents up around 6:00 A.M. for a morning headcount; the guards make sure no one has escaped in the middle of the night.

Juveniles housed in these facilities may or may not have a roommate, or more accurately a cellmate, depending on available space and the crime committed. Those convicted of violent offenses are more likely to be housed individually.

All residents clean their cells and make their beds—they are expected to wash their own linens—before they line up and walk silently to the cafeteria, where they are served a small breakfast on a plastic tray. Many facilities enforce a strict no-talking policy even while the youth...
eat (Wildeboer, 2010: 2). All residents wear identical, standard clothing, as their own clothing and possessions are confiscated and stored upon their arrival to the facility. Once breakfast is over, the youth are patted down and searched before beginning their classes for the day. On average, children spend about four hours in class, with an additional thirty-minute recess, which is comparatively low to non-incarcerated youth, who spend almost twice that amount of time in school daily. They are allowed a small period of free time, as well as encouraged to participate in physical activity for at least one hour every day. The entire day consists of routine line-ups and pat-downs, and the facility rules are taken extremely seriously. Some enforce the rules through physical means, while others use reward and punishment tactics, such as solitary confinement, to inspire compliance among residents.

In Japanese juvenile detention facilities, on the other hand, residents wake up at 7:00 A.M., scrub their sparse dormitories, sing in chorus, and do physical exercises to build group solidarity. In the afternoon, juveniles participate in counseling, vocational training and a short period of private time. These juvenile facilities are supervised by the Ministry of Justice and offer a variety of services to the juvenile, “including the opportunity to receive a correctional education. A correctional education is quite similar to the type of education children in [United States] private and public schools receive. It encompasses courses in math, science, English, humanities, and history. These training schools also offer vocational training and provide very sound and efficient medical treatment" (Berezin, 1982: 60).

While this description may sound very similar to the routine followed by American detention facilities, there is one stark difference that changes the entire atmosphere. Unlike the American centers, the Japanese facilities do not have fences or locked gates surrounding them; they are relatively easy to escape from. When children do escape from them, and are caught, they
are punished with things like scrubbing dormitory floors or jumping rope to the point of exhaustion rather than extended sentences.

Youth in these facilities are also encouraged to acknowledge their mistakes and face what they have done. “There, remorse and victim empathy are encouraged by the use of role-playing and role-switching” (Smith, 2008: 18) One specific approach employed at these facilities is role-lettering, “in which the offender first writes a letter of apology to the victim or the victim’s family, and then replies in the role of the victim or family member. It is important, though, that after this painful process of reflection and empathic identification the offender should feel accepted and valued for his or her positive qualities and abilities, rather than being solely and permanently stigmatized as an offender” (Smith, 2008: 18).

In Japan, even very serious crimes carry relatively light sentences. Most juveniles are kept for no more than a few months, with the most serious cases carrying sentences averaging 1 to 2 years. There is a fear in Japan that longer separation and isolation from the community will do more harm than good, impacting the youth’s ability to be reintegrated and to live a successful life in Japanese society. Juveniles are often released back into the community, where all members participate in rehabilitating the juvenile delinquent.

Besides the actual difference in facility structures and lengths of commitment are the sheer numbers of youths incarcerated. In Japan, there are only seven youth detention facilities and seven juvenile prisons, holding roughly 3,500 inmates. In the United States, approximately 81, 015 youths are currently residing in 2,458 private and public juvenile facilities (OJJDP 2008: 2). Population differences in no way account for the drastic differences in crime or incarceration. We must therefore conclude that there exists something particular about these two cultures that drives not only instances of crime but also penal law governing imprisonment trends. In the chart
picted below, Japan and the U.S. stand at opposite sides of the spectrum, with the U.S. holding the highest juvenile incarceration rate per 100,000 youths (336) and Japan holding the lowest of all comparative nations (0.1).

![Figure 10: Youth Incarceration Rate: United States vs. Other Nations](image)

The Annie E. Casey Foundation
[http://www.aecf.org/~/media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf](http://www.aecf.org/~/media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/JJ_NoPlaceForKids_Full.pdf)

Legislation:

There seems to be a disconnect between the language of modern juvenile justice legislation in the United States and how these policies are put into practice. While many state codes use a language of restorative justice—emphasizing accountability, but also placing extreme importance on reintegration and resocialization of the youth—the way juvenile delinquents are sentenced suggests a continued, narrowed focus on the accountability sphere of restorative justice.

Restorative justice seeks to find a balance between improving public safety, sanctioning youth crime, and rehabilitating and reintegrating juvenile offenders. It recognizes that crime
hurts not only the victims, but communities as a whole, and relationships between the different people who make up the community. Therefore, rather than merely committing a youthful offender to a detention facility, justice should emphasize repairing the harm that has been done and restoring the tense or broken relationships that have resulted. “Balanced and restorative justice (BARJ) is a new framework for juvenile justice reform that seeks to engage citizens and community groups both as clients of juvenile justice services and as resources in a more effective response to youth crime” (Pavelka, 2008: 6). This model downplays the role of judges in setting the agenda for sanctioning and rehabilitation of youth offenders. Instead “crime victims and the community play critical roles in setting the terms of accountability and monitoring and supporting completion of obligations” in a positive and prosocial way (Pavelka, 2008: 9).

In the United States, each state is in charge of its own, separate juvenile justice system, which allows for much variety in terms of legislative policy concerning age limitations, rules of transfer, and even the intended mission of their respective juvenile justice systems. While every state independently drafts this policy, the majority of states employ restorative justice principles in the language of at least one of their policies concerning youth sentencing and rehabilitation.

California is just one of the many states to include a message of restorative justice in its codes. The "Youth Authority Act" of the California Welfare and Institutions Code (Relating to Minors, Section 1700) clearly states that the intended mission of the juvenile justice system is "to protect society from the consequences of criminal activity and to achieve that purpose through community restoration, victim restoration, offender training, and treatment [which] shall be substituted for retributive punishment and shall be directed toward the correction and rehabilitation of young persons who have committed public offenses" (Pavelka, 2008: 102). This code clearly identifies rehabilitation as a main goal of the juvenile system, not retributive or
penal sanctioning of offenders.

Alaska’s state code also reinforces the ideals of a balanced and restorative approach to dealing with juvenile crime. “Alaska's statute (Alaska State Statute, Article 1, Section 47.12.010) seeks to promote ‘a balanced juvenile justice system in the state to protect the community, impose accountability for violations of the law, and equip juvenile offenders with the skills needed to live responsibly and productively’” (Pavelka, 2008: 17-18).

Sandra Pavelka, PhD, has conducted a thorough examination of the different language used throughout the United States, noting select phrases that appear in numerous different codes. According to her findings, “common restorative language in many of these state documents includes: ‘holding juvenile offenders accountable for their offense’, ‘involving victims-and-the community, in the justice process’, ‘obligating the offender to pay restitution to the victim and/or to a victim's fund’, and ‘securing safer communities’” (Pavelka, 2008: 20).

While this ideological foundation is written into the codes, the progress away from punitive justice and towards a more balanced approach to youth crime appears to end here. Creating these policies and actually executing them in their intended way are two very different measures, and actual implementation of these principles is where many state juvenile justice systems fall short of fulfilling their intended mission of restoring youth offenders and facilitating their successful rehabilitation. This is due to a combination of struggles to fund these efforts, political forces impeding the success of proposed programs, and ideological contrasts.

As seen in the graph below, 41 states implement restitution programs, which require the offender to correct the harm that has been done either by reimbursing the offender, or contributing to a collective victims’ fund. Further, 39 states use community service sentencing to help benefit the community that has been harmed by the crime committed. However, both of the programs have
a heavy emphasis on the victim, rather than rehabilitation of the offender. Indeed, this trend is made evident by the fact that only 2 states offer mentoring programs to offenders. These programs can be critical in helping offenders understand their sentencing, as well as providing invaluable advice on reentering society and finding a job that will keep the offender from relapsing into criminal behavior upon release. “What this trend suggests is that restorative justice statutes are by no means a guarantee that states are necessarily moving against the punitive political trend seen throughout the country” (Pavelka, 2008: 21).

Figure 11: Restorative Justice Programs in the States

<table>
<thead>
<tr>
<th>Restorative Justice Programs</th>
<th>Other Terms Associated With Programs</th>
<th>Total Number of States Implementing These Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arbitration</td>
<td>Community arbitration, juvenile arbitration</td>
<td>2</td>
</tr>
<tr>
<td>Community-affiliated courts</td>
<td>Drug courts, juvenile hearing boards, teen courts, tribal courts, youth courts</td>
<td>7</td>
</tr>
<tr>
<td>Community focus groups</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Community justice centers</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Community probation</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Community service</td>
<td>35</td>
<td></td>
</tr>
<tr>
<td>Community supervision</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Community surveys</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Conferencing</td>
<td>Circle sentencing, community/Restorative conferencing, community panels, community resolution teams, family group conferencing, hospital conferencing, powwow conferencing, peacemaking circles, peace mediation circles</td>
<td>12</td>
</tr>
<tr>
<td>Victim-offender dialogue</td>
<td>Victim-offender mediation, mediation, victim-offender reconciliation</td>
<td>36</td>
</tr>
<tr>
<td>Mentoring</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Restorative boards</td>
<td>Community accountability boards, community restorative boards, neighborhood youth panels, restorative probation boards, victim accountability boards</td>
<td>11</td>
</tr>
<tr>
<td>Restitution</td>
<td>Victim compensation</td>
<td>41</td>
</tr>
<tr>
<td>Victim impact funds</td>
<td>7</td>
<td></td>
</tr>
<tr>
<td>Victim impact statements</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>Victim services</td>
<td>Victim awareness classes, victim liaison groups, victim fund, victim impact classes, victim notification, victim services coordinator</td>
<td>16</td>
</tr>
<tr>
<td>Work crews</td>
<td>Crime fighter crews, habitat for humanity, offender service projects, pay-work option</td>
<td>9</td>
</tr>
</tbody>
</table>

Despite the use of restorative justice language, youth continue to be transferred to adult court, tried as adults with minimal regard to their age or developmental capacity, and sentenced to adult prisons, where they are forced to grow up in an atmosphere that stunts rather than promotes healthy socialization and development. While the language of the state codes suggests progress away from the practice of harsh punitive sanctioning, the law in action fails to promote these ideals, regressing instead to strict penalties that ignore the developmental needs of the juvenile offender.

In Japan, however, the opposite problem seems to exist. The recent “Get-Tough Movement” has spurred a number of legislative reforms to Japan’s Juvenile Law in 2000 and 2005, a law that had remained largely untouched since its inception in 1948, during the allied occupation. However, these harsh legislative changes to the landscape of juvenile justice are nevertheless paired with decreases in juvenile arrest and incarceration rates. This may be that despite the creation of these get-tough policies, Japanese family court judges are more careful to choose a punishment procedure.

One reason for the emergence of these strict legislative reforms is the media attention given to a few violent juvenile crimes, causing a moral panic and sparking a “public debate over juvenile justice because of the low age of the murderers and the cruelty of their crimes” (Chung, 2010: 165). This sensationalized media coverage has resulted in mass fear and anxiety of crime. “According to the most recent opinion poll on crime and safety in community by the Cabinet Office, 84% of respondents replied ‘they became concerned about community safety because newspapers and television programs have often featured the issue’. The mismatch between the sources of public perception and recorded crime is stark indeed” (Ellis, 2006: 169-170).

The media effectively led the charge towards penal reform. By reporting on violent
crimes disproportionately to their actual occurrence, these media outlets have helped to shape
to their actual occurrence, these media outlets have helped to shape public opinion, fueling the fire and moral outrage that eventually caused legislatures to amend public opinion, fueling the fire and moral outrage that eventually caused legislatures to amend their criminal policies to fit the increasingly penal views of the public. “The evidence shows that their criminal policies to fit the increasingly penal views of the public. “The evidence shows that Japan still has a low crime rate, especially for violent crime. However, the Japanese public has Japan still has a low crime rate, especially for violent crime. However, the Japanese public has low confidence in its safety, a high level of fear of crime, and a very punitive attitude toward offenders. The high level of media focus on rising recorded crime and a campaign for victims’ low confidence in its safety, a high level of fear of crime, and a very punitive attitude toward offenders. The high level of media focus on rising recorded crime and a campaign for victims’ rights have contributed toward these finding[s]” (Ellis, 2006: 174).

Recently, the political party in power, the LDP, has used this fear to secure political power and favor. Promotion of get-tough crime policies is a political tool used to gain support when the party in power fears loss of control. However, this is reflected more in the arrest and incarceration rates of the criminal—rather than juvenile—justice system. In fact, the juvenile arrest and incarceration rates have remained relatively stable despite the patterns in the adult courts “because family court judges’ prior decisions under the right-center regime play a role in buffering the influence of political power in the juvenile justice system. In other words, family court judges are less influenced than the police officers and public prosecutors” (Chung, 2010: 202). In fact, despite increases in incarceration rates of adults under these new crackdown laws, “the total number of incarcerated juveniles has radically decreased by 30.4%, from 28,629 in 2000 to 19,916 in 2007… [Additionally,] the juvenile incarceration rate per 100,000 [has] decreased by 20.2%, from 203.6 in 2000 to 162.4 in 2007” (Chung, 2010: 170). The juvenile trend does not reflect or parallel that of the adult system, but instead is completely different. One reason for this divergence may be attributed to the different players who hold power in the criminal versus the juvenile system.

Role of Prosecutors
In addition to the cultural differences that have pushed reforms in opposite directions, one reason for the divergence between the United States and Japan is the importance of different actors in each of these systems. In the United States, *Gault* ushered in an era not only of increased juvenile rights, but increased punitiveness of the juvenile system, albeit indirectly. The introduction of defense attorneys into the juvenile courts was accompanied by a simultaneous increase of prosecutorial presence in these courts. *Gault* made prosecutors part of the process unlike ever before, allowing them to share in the power previously granted to the judges.

Prosecutors in the United States juvenile justice system are much more powerful than their Japanese counterparts. They play a role not only in juvenile trials, but also in determining which court the trial will be held in. “Prosecutorial discretion provisions allow them to determine the choice of forum in which to file a case. Under these provisions, prosecutors can make the decision without the necessity of a hearing, providing [them] with ever increasing power in the juvenile court” (Sarri, 2002: 13). This orients the criteria of transfer more around offenses than offenders and their particular circumstances. While national data on the number of juvenile transfers as a result of prosecutorial discretion is not available, estimates suggest that they outnumber judicial waiver transfers. In addition to direct-file legislation, a prosecutor may strategically determine to file particular charges mandating statutory exclusion against a juvenile, thus resulting in transfer to adult court. Thus, the introduction of prosecutors into the juvenile justice system had an inevitable punitive effect on this system, driving it increasingly away from its original child welfare intent.

In Japan, however, prosecutors are essentially absent from the juvenile courts. As in adult criminal trials, prosecutors play an important role in the investigation process and determining the facts of the case. Regardless, all cases involving youth under the age of twenty must be sent
to the Family Court; here it is decided whether or not the juvenile should be transferred to the prosecutor for trial in the criminal system. As a general rule, the Family Court refers cases to the public prosecutor when a youth over the age of sixteen causes death by an act committed with criminal intent. The court may override the power of the prosecutor, however, and choose “to place the juvenile under protective measures, if the court judges that it is the most appropriate disposition for the juvenile considering the result of the investigation into the motive to commit the crime, the circumstances of the case, the situation after the criminal act, the personality, age and behavior of the juvenile, and the juvenile’s home environment” (Chung 2010: 91).

Before the recent reforms to the Juvenile Law, prosecutors were not even allowed in the courtroom in any matters dealt with by the Family Court. “In contrast, the amended law allows a public prosecutor to participate in such proceedings including attending hearings, if a court deems this necessary. Therefore, in the complicated cases where a juvenile severely contests the charge on a serious crime such as homicide, the public prosecutor can present evidence at the hearing. This amendment is aimed at improving the fact-finding process” (Chung, 2010: 72). While the prosecutors now have more power than previously afforded them, they are still under the discretion of the Family Court judge.

One reason Japanese prosecutors have been prevented from entering the juvenile justice system with the same power given to their American counterparts is the continued notion of the juvenile court as serving the best interests of the youth, sanctioning them in a way that preserves their dignity and prevents them from facing the stigmatic consequences adult criminals often face post-trial. The stark cultural differences between the United States and Japan have affected not only how youth are ushered through the system and sentenced, but also who they come into contact with and who the major players are in juvenile court.
VII. Cross-Cultural Studies

Sociological Argument: Culture of Solidarity v. Culture of Independence

“In Japan, the locality-based group formation causes both a sense of security and an infinite number of repressive rules; these two elements are bound together to produce high self-control which acts as a strong force restraining people from committing crime. This is in contrast to the Western world’s emphasis on the personal attribute-based group formation, the limited and permissive nature of rules, and the relative freedom of action—all of which contribute to weakening the crime prevention mechanism and stressing the role of punishment rather than prevention” (Komiya, 1999: 369).

Japan has incredibly low crime and incarceration rates compared to the rest of the industrialized world. This is often attributed to cultural factors that distinguish Japan from other Westernized nations. When Japan adopted the American juvenile justice system in 1900, “traditional morality and customs were left intact…The Meiji government imported the form of the Western legal system, [but] not its spirit” (Komiya, 1999: 371). Many laws were adopted in theory, but not in practice. Japanese culture has played a fundamental role in the way certain laws are applied, as well as notions of appropriate punishment and even the very function of the juvenile court. As a result, Japan has a dual legal culture; different norms dictate how to deal with people of one’s immediate social group and with strangers.

In Japan, nearly all citizens are members of close-knit groups. In one’s uchi world, or inner-circle, members form strong and intimate bonds that allow them to depend on all other members of this group. There is a vertical hierarchy in the group, and respect and reverence are given to those at the top of the ranks. “The rule of conduct which indicates the appropriate behavior in a range of uchi contexts, is giri (Japanese traditional duty)” (Komiya, 1999: 372).
Giri is backed by informal sanctions, rather than formally recognized ones, and the quantity and quality of giri varies according to the degree to which people are dependent on one another. Those who do their giri can expect something in return, usually a sense of security. The Japanese feel most protected within the enclosure of their inner circle, and seek security within their uchi world rather than seeking personal autonomy. When disputes arise, there is a strong expectation that they are solved by mutual understanding and agreement; it is considered selfish to assert one’s rights and resort to the law to solve any disputes. “In conclusion, the uchi world is characterized by reciprocity in personal relationships and oriented by the legal culture of particularistic giri and the precarious return from such giri. Therefore, the role of rights and duties is minimized in the uchi context” (Komiya, 1999: 374). No equivalent to the uchi world exists in the United States.

In contrast to one’s inner-circle or uchi world exists the yoso world or outer-circle, comprised of strangers and essentially anyone not a member of one’s uchi world. Because of the absence of giri consciousness, the Japanese usually interact with people of the yoso world very little; when they do, they act with indifference and coldness. The rule of conduct governing appropriate behavior in the yoso world corresponds to the American concept of rights. “As a result, in the yoso, one uses the law, appealing to one’s right, when the law is of benefit to one. However, one has no interest in the law when the law does not benefit one, and one even ignores the law when the law burdens one. In short, one is free to use the law as one likes” (Komiya, 1999: 375). The yoso world is dictated by self-interest and lack of cultivated relationships; as a result, giri has no role in this context. Because they feel no connection to people of the yoso world, the Japanese have no reservations resorting to the law to solve even minor disputes. The difference between the yoso and uchi worlds is pictures below.
Westerners, Americans in particular, have developed a system of human interactions that is parallel to the *yoso* world of relations. While the Japanese stress the group over the individual, Americans “have idealized the concept of the independent individual. They regard individuality as important for the growth of human beings, and self-reliance as essential to self-realization… Individual freedom is firmly established as the guarantee of the superiority of the individual over the group to which the individual belongs” (Komiya, 1999: 376). Further, in Japan, participation in multiple groups is viewed as a betrayal; it is common for people to be members of only a single group, whereas in the United States, most people enjoy membership of multiple social groups. In Japan, therefore, one’s *uchi* world consists of a single group, and groups exist alongside each other with relatively no interpenetration, while in the United States it is common for groups to overlap and intersect.

This understanding of Japan’s legal culture may be applied to the country’s low crime rate. In effect, the *yoso* world does not explain or relate to the low incidence of crime in Japan, if anything it aggravates the crime rate, as people act in their own self-interest. “However, this has little impact on Japan’s crime situation as a whole. This is because the *yoso* world is hardly
important for the daily life of an average Japanese. In other words, there is almost no social life in the *yoso* world due to the strong distinction between *uchi* and *yoso*” (Komiya, 1999: 378).

Most human interaction takes place in the *uchi* world. Because members may vary drastically in terms of occupation and social class, it is necessary for the group to cultivate instruments of social control by means of strict rules of conduct. “In a range of *uchi* contexts, the Japanese are therefore surrounded by many rules about what is proper behavior. Such rules range from the serious to the trivial. What is important here is that these rules can be viewed as contributing to the maintenance of the ‘vertical’ or hierarchical order in the *uchi*-type group” (Komiya, 1999: 379). The group is organized according to seniority, as it is assumed that ability between members is invariable. As ranking by seniority is more objective than a merit-based system, this reinforces group solidarity. Further, because rules function to bolster ranking-consciousness, they effectively repress any deviation from this vertical social order. Social rules, in addition to legal sanctions, act as a deterrent to crime.

The Western notion of rules functions to maintain the horizontal, rather than vertical, order. “In other words, rules in the West function to coordinate interactions among independent individuals, and are thus oriented towards guaranteeing their freedom and equality.” (Komiya, 1999: 380). In the United States, most people see rules of social conduct as generating equality and facilitating human interaction. Rather than feeling restricted by these rules, they enjoy a level of relative autonomy. As a result, Americans tend to remain a relative sense of freedom regardless of social rules, whereas the Japanese feel much more constrained and limited by the rules dictating appropriate behavior in the social world.

The Japanese constantly monitor their own behavior as well as that of other members of the group. The *uchi*-type group contains many people who passively observe the behavior of
their fellow group members and voluntarily offer this information up to their superiors, who instruct those who have broken the rules of correct conduct. Additionally, members engage in regular ritual practices contributing to group conformity. However, these rules are not strictly imposed on members by force. Members of the group willingly consent to this social control because of what they receive in return, the support and care of other members. Further, “in contrast with Western perceptions, accepting strong informal social control is not a sign of weakness in Japan; rather it is the proud product of self-control” (Komiya, 1999: 382). In the United States, passive acceptance of this control would signify defeat, and the end of American autonomy and liberty. In Japan, however, self-control, as demonstrated by this acceptance, is the most highly valued characteristic, and families attempt to cultivate this trait in their children from a very young age.

Sociological Argument: Family and Educational Socialization

Adolescent behavior and development are generally recognized as mediated, in part, by family process. Perceptions of self and others may be substantially influenced by the manner in which parents deal with their children and by other aspects of the home environment. There is something intrinsically different between childhood as experienced in Japan and in the United States. The Japanese learn self-control early on in life; they are socialized by their families and schools to develop strong self-control. In the United States, this is replaced with developing a strong sense of self and personal identity. In Japan, children are under strict home discipline; parents hold very high expectations of acceptable behavior, and children learn very early to accept parental authority. According to a study conducted among “parents from the US, Japan, and Korea (Prime Minister’s Office, 1982), Japanese parents, more than Korean and American parents, expect their children to be ‘considerate of other people,’ ‘to be cooperative,’ ‘to observe
rules of conduct,’ or ‘to have a sense of civic responsibility.’ In contrast, they emphasize ‘leadership,’ ‘fairness,’ and ‘emotional stability’ less than Americans” (Gielen, Naito: 7).

Further, while more and more Japanese women are choosing to enter the workforce, full-time motherhood continues to be the norm, particularly for the early years of childhood. In contrast, parents in the United States typically employ third-party childcare agencies as an alternative to stay-at-home mothering, particularly because of higher rates of divorce (41% of first marriages, 60% of second marriages, and 73% of third marriages, compared to 27% of marriages in Japan), out-of-wedlock birthrates, and the tendency for young mothers to return to work soon after giving birth. Because American children are left in daycare centers with multiple other children, less individual time is spent with these youth, and as a result less surveillance is available. Japanese children are constantly under the hawk’s eye of their mother, while American children are given more autonomy to develop freely.

Additionally, Japanese children are socialized through their schools to curb selfish behaviors through the use of small group activities emphasizing the importance of group solidarity. Elements of social control and surveillance exist even in schools; children are taught to take responsibility for the academic and behavioral failures of their peers, regardless of whether personal responsibility exists. “As a result, pupils come to have a strong sense of solidarity with the group while, at the same time, continuously monitoring one another’s behavior within the group” (Komiya, 1999: 383). This contributes to overall interdependence of group members. In the United States, this reliance on others is looked down upon; independence and self-reliance are weighted much more heavily. In schools, children are taught to work independently of others and complete tasks on their own. These alternative strategies to socialization are observed in Joseph Tobin’s study of preschools in Japan, China, and the United States, in which he notes
A. Joseph Tobin’s Preschool Study

In every society, preschools are institutions that relay cultural values and norms to the next generation, its children. A comparative study conducted by Joseph Tobin of preschools in Japan, the United States, and China, revealed just how these cultural differences are embedded in both the curriculum and overall atmosphere of the preschools.

In Japan, an era of increasing nuclearization and gentrification of the family has led to an increase in emphasis on groupism in preschools. Thus, children are encouraged to participate in activities that stress group feeling by providing opportunities to enjoy ties to peers and to develop warm relationships with others. They sing in unison, perform calisthenics, and enjoy free play outside together. They are taught the importance of groupism and learn to cherish their position as a member of a group. The activities are also designed to create “child-like children,” who are gentle, kind, obedient, empathetic, and socially conscious (Tobin, 1991: 31). They are able to have fun and relax, but can also listen and be serious. Most importantly, they recognize the importance of caring for others as well as identifying and anticipating their needs.

In the U.S. however, quite the opposite is emphasized to children through activities. Children are taught to be independent, to develop their individuality in preschool. The ability to choose what activity to participate in allows children to further assert their uniqueness and individual preferences. While the activities display a large variety of interests, they all encourage verbal expression, self-discovery, and self-actualization in the hopes of developing in children self-reliance, independence, individuality, and free choice. While the Japanese hope to produce a ‘child-like child,’ the U.S. hopes to produce a ‘highly individuated child.’ U.S. preschool teachers believe that “whenever possible, children should be given the opportunity to make...
Methods of dealing with misbehavior also vary distinctly between Japanese and American preschool teachers. In Japan, it is customary for teachers to ignore misbehavior or fighting among students, or to encourage other students to step in and take responsibility for ending such behavior. “Japanese teachers think their most powerful influence over children is their being viewed unambivalently as benevolent figures; teachers are therefore careful to avoid interacting with children in unpleasant, stressful, emotionally complex ways” (Tobin, 1991: 23). By allowing other children to mediate disputes, they inspire them to work with others to compromise. They promote groupism among the children, allowing them to collaborate with one another to solve conflicts. “Good children feel most acutely the misbehaving children’s shame, imminent loss of teacher approval, and the risk they are running of isolation from the group, so they implore the stragglers to see the error of their ways and come back to the fold before it’s too late” (Tobin, 1991: 43). The teachers take a very hands-off approach to allow the children to deal with misbehavior alone, teaching them how to cooperate with one another without any direct influence by authority. Teachers are also “careful not to isolate a disruptive child from the group by singling him out for punishment or censure or excluding him from a group activity” (Tobin, 1991: 22-23). They believe exclusion from the group can have very serious emotional and psychological consequences for the child, and therefore make every attempt to ensure they are never seen as separate from the group.

In the U.S., teachers act as mediators to resolve disputes between children, encouraging them to use their words to explain the issue and successfully negotiate. Thus, a “verbal approach to conflict resolution and discipline” is taken (Tobin, 1991: 152). This helps children understand the American concept of justice and gives them the tools necessary to defend their claim to
innocence and learn how to verbally, rather than physically express themselves. “Time outs” are one method commonly used to discourage children from repeating behavior deemed inappropriate or unacceptable.

Further, “while Americans are beefing up preschool and kindergarten curricula in an attempt to close the educational and economic gap with Japan, the Japanese are spending little time reading, writing, and counting in their preschools” (Tobin, 1991: 191). Japanese recognize that their children will have to work hard their entire lives, and thus believe preschool should be a place where they learn to relax and be truly childlike. The roots of Japanese cultural values are implanted in this stage of life, where children are taught to participate in groups and be dependent on others. Similarly, there is no need to teach reading in preschool to Japanese children, who generally are taught at home by their mothers. In the U.S., children are encouraged to use language to express themselves, and develop the American concepts of justice, free choice and speech, and individuality.

One final, critical difference between American and Japanese preschools concerns the issue of teacher to student ratio. In Japan, large classes and ratios are welcomed and encouraged, while in the U.S. it is believed that small class sizes and student to teacher ratios are best equipped to give children the individual attention needed. “In the eyes of Japanese preschool teachers and administrators, very small class sizes and low student/teacher ratios produce a classroom atmosphere that emphasizes teacher-student over student-student interactions and fails to provide children with adequate opportunities to learn to function as members of a group” (Tobin, 1991: 37). Further, “virtually all [surveyed] agreed that groupism is the distinguishing factor between Japanese and American preschools, and indeed, between the two societies” (Tobin, 1991: 39). Thus, for Americans, small class sizes allow teachers to address the
individuality of each child separately and give them the attention they need to develop their
independence and lead them towards the road of self-discovery. In Japan, however, groupism is
cherished more than individualism, and therefore large class sizes make it easier for children to
learn how to function as members of a group.

B. Values Stressed During Adolescent Socialization

Further, as a result of different values emphasized in these two societies at large,
Japanese and American children learn to develop different characteristics deemed important to
healthy maturation. The meaning of adolescent behavior can only be fully understood within a
cultural context; this context includes the intersection of family culture with the wider social
culture. In the United States, values stressed in the socialization process “represent general
principles of action based on an individualistic expression of a sense of selfhood. Being
straightforward and honest, working hard, being lucky, successful, and proud of being an
American, represents the ideology of the ‘American dream.’ It is the essence of what it means to
be an American citizen” (Silver, 2002: 213). Japanese children are socialized to value a very
different set of values centered on the notions of “collective solidarity… and reciprocal
relationships [or mutual obligations, such as] the concern over the use of wrong means to achieve
self-advancement and the importance of remembering the kindness of others” (Silver, 2002:
213).

The research presented above demonstrates that youth in Japan and the U.S. are
socialized to enumerate different values. The Japanese collectivist sentiment not only leads to
reduced crime levels across all demographics, but leads to different understandings of a child’s
place in society. Youth in Japan are framed as both malleable and vulnerable beings requiring the
careful supervision and support of the community in order to become successfully productive
members of society. Because the Japanese view children as needing of protection, this is translated in their protectionist juvenile justice system.

However, the lack of this strong collectivist sentiment in the United States creates a tension between two very different groups of people: “those who believe the state has a special interest that its youth grow to be productive adults...[and those who believe that the] crime committed [by juveniles] is of such a nature that there is no longer a need for juvenile courts” (Dabiri, Smith, 121). While the voice of those who advocate a more rehabilitative approach have recently grown stronger, sentiment to punish youth to the full extent of the law is continually present in juvenile justice reform rhetoric, and even more visible in actual practice.

Recent research has brought to light additional information considering youth crime in Japan and the United States. Besides a high degree in variance of crime rates in the two countries, there may exist differences in the reasons behind why youth commit these crimes in these two countries. Typically, crime is linked to poverty; in Japan, however, crime is greatly associated with the pressures of school performance and feelings of neglect from parents. Many children commit delinquent acts seeking attention from their families (Hays, 2009: 4). These motives may also help explain why many youth in Japan receive probationary sentences. They are sent back to their homes with the idea that the community is best equipped to deal with this child and help integrate them into society. It is here, not in juvenile or adults prisons, where they can receive the attention and care necessary to develop and grow further.

In the Unites States, however, “preliminary rate and bivariate regression analyses find that... low poverty status is strongly connected to higher levels of criminal arrest and homicide for every age, and poverty level is a significantly larger predictor of arrest and homicide risk than is age” (Brown & Males, 2011: 2). These conclusions demonstrate that delinquency is tied more
to socioeconomic factors than typical notions of youth as innately predisposed to commit crime, as part of a learning process eventually culminating in conceptions of morality and an understanding of the difference between right and wrong. The association between poverty and crime may be seen as a reflection of the importance placed on material wealth and success in the United States. Youth are taught from a young age to work hard so that they may secure a good job and a comfortable life. When this proves harder than to achieve than expected, many may turn to crime as a means of attain material wealth, which to many symbolizes success.

Additionally in the United States, there is a strong link between racial minorities, poverty, and crime, which is reflected in the proportion of minority populations incarcerated in the United States. Sentencing in the U.S., in addition to an internalization of the values of personal responsibility and individualism, may be a form of racial discrimination and domination.

**VIII. CONCLUSION**

It is evident that Japan never fully embraced the American legal doctrine of juvenile justice. Certain aspects that complimented Japanese social values were adopted, while the more punitive aspects were never fully implemented. “In short, Japanese legal systems are Western in guise, but Japanese in spirit” (Kombiya, 1999: 372). At the start of the twentieth century, the two systems seemed almost identical, whereas currently they sit at opposite ends of the spectrum. However, it is evident that although they appeared indistinguishable, the Japanese system never placed any priority on child welfare elements as the U.S. did; most energy was instead focused on those who were held criminally accountable. Further, while juvenile courts and detention centers were created, they were never used to the same extent as their American counterparts; they functioned solely as a last resort, as almost all youth offenders were diverted out of the system and placed under community supervision.
Differences in social structure—associated with differing beliefs, values, notions of self, and perspectives on social life—play influential roles in controlling behavior and resolving conflicts. In Japan, group solidarity and self-control are valued above self-interest and independence, creating a culture of citizens who willingly conform to legal rules. In the United States, however, there is a strong emphasis on developing a sense of self and individuality. This leads to the creation of a society where self-interest is placed above the interests of the group as a whole, leading to overall higher crime rates, including juvenile rates.

Further, the function of the juvenile courts and punishment are viewed in diametrically opposed fashions. In Japan, the juvenile court system is rarely used, and juveniles who spend time in detention facilities are released into the community after relatively short periods of time. When a juvenile commits a crime in Japan, the community feels it is their responsibility to rehabilitate the child and reintegrate them into the group. In the United States, however, the juvenile who commits a crime is perceived as a threat to society and is often considered unable to be rehabilitated. Juveniles who partake in criminal behavior are expected to assume full responsibility for their actions, and to serve time in a detention center as punishment if the crime is considered serious enough. Rather than emphasizing reintegration into society, American juvenile justice focuses on separating the juvenile from society in an attempt to prevent further delinquency. The juvenile offender is to be feared, not pitied. It is this culture of fear, paired with the cultural values of self-reliance and independence, that has led Americans to adopt penal reforms that have strayed from the original juvenile justice functions of protection and youth welfare.

So why have these two juvenile justice systems continued to move apart throughout the years? Differences in crime rate alone cannot explain this shift, as it has been proven that higher
incarceration rates do not combat high crime rates. Increases in American punitiveness do nothing to lower the rate of crime. Rather, there is something intrinsic in these two cultures that has driven reforms in divergent directions.

Above all else, Americans value their independence and their children are taught to develop a strong sense of individuality. However, this comes with a price when children find themselves in trouble with the law. Because children are treated as “mini-adults” they are expected to accept full penal responsibility for their actions, and thus they receive harsh sentences more appropriate for adult criminals. If American children are treated as “mini-adults,” then Japanese youth are treated as “large babies,” able to depend on their parents and other members of the group for support. They are considered to have diminished penal capacity, and as a result receive light penal sanctions for delinquent conduct. American and Japanese notions of juvenile justice have evolved over the past century in an attempt to become more in sync with cultural ideologies related to the nature of childhood.

VIII. Works Cited


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