

# Class Syllabus and Summaries

March

## The First Week –Understanding the Current Situation in Japan

### **1. Introduction: Overview of the Criminal Justice in Japan**

According to a report of *Kyodo*, the overall number of cases of crimes has consistently declined in Japan after hitting a peak of 2.85 million in 2002. The criminal justice system nicely works to control criminal activities, though it still has some problems with the protection of a suspect's human rights. Japan's system of criminal justice can be regarded as a hybrid between Civil Law and Common Law. The substantive criminal law has been heavily influenced by French and German criminal laws, whereas the procedural criminal law has been greatly rectified by US ideas and principles after the Second World War. The juvenile justice system that was born in the US brought up in Japan, while prison system could be considered to be a unique Japanese descendant because of its powerful rehabilitative treatment that was thrown away in the US.

### **2. Social Problems and Crime Prevention in Japan**

It is true that Japan has enjoyed a low crime rate for a long period, but Nippon has been faced with some social problems. Above all, the high suicide rate is thought of as a serious problem. According to the National Police Agency, the number was over 20,000 in 2017, though the rate falls for the 8<sup>th</sup> consecutive year. It might be said that the Japanese are prone to attack themselves, rather than attacking other people. In addition, they encounter a declining birth rate, an aging population, dropping marriage rate, rising divorce rate, and economic recession. In the field of crime prevention, despite the low crime rate, Japanese people are still concerned about particular crimes such as kidnapping, identity or billing frauds, cyber-related crimes, elderly crimes, and recidivism. Introducing a new mechanism as well as restoring cohesion in the community might be required to sustain crime-prevention volunteer activities, which have been instrumental to reduce the crime rate in Japan.

### **3. Recent Trends in the *Boryokudans* (Japanese Mafia) Activities**

Organized crime groups in Japan, largely the notorious *Boryokudans* (designated *Yakuza*, literally means ‘Violence Group’), have become much subtler and more sophisticated since the implementation of the Anti-Organised Crime Act of 1991. The *Boryokudans* are prone to acquire products from pseudo-legal activities by establishing companies having the non-members of their groups as nominal managers in order to disguise their violent organized crimes. Metaphorically speaking, the *Boryokudans* have largely discarded their old-fashioned kimonos, *Yakuza*, for new-western suits, enterprises. In 1999, The Punishment for Organisational Crime and Control of Proceeds of Crime Act and The Interception of Communications for Criminal Investigation Act were introduced into the criminal justice system to cover not just the changed *Boryokudans* but other dangerous cults like the *Aum Supreme Truth Cult*, which committed a series of crimes, including the fatal sarin nerve gas attack to the Tokyo underground system in 1995. In recent years, Japan’s criminal policy has got tougher against the *Boryokudans*, which thereby unleashes much more skillful activities against civilian life. As for an interesting criminal case found guilty by the Supreme Court in 2003, the accused had the bodyguard members called a SWAT who guards the accused, carrying a pistol and an actual package. The accused who was the head of a *Boryokudan* made it usual to do and guard him. Even if direct indication wasn't passed, the accused implicitly accepted and approved that as a natural thing, and the SWAT also understood the thing, hence, the accused was making the SWAT possess the pistols. Therefore co-principals through conspiracy was formed for possession of firearms and swords kinds.

## The Second Week – Japanese Criminal Law in the World

### **4. Criminal Jurisdiction (1): Basic Principles of the Application of Japanese Criminal Law**

According to the current Penal Code of 1907, article 1 regards territorial jurisdiction as the primary principle in the application of criminal law. Regardless of the category of crime, every State can exercise its own criminal jurisdiction when a crime takes place in the territory of the State. Article 2 provides for protective jurisdiction as a pivotal notion to protect seven State’s interests wherever the crime is committed. Article 3 lists 16 types of crime on the basis of active personality jurisdiction, provided double criminality is satisfied. Article 3-2 stipulates passive personality jurisdiction with 6 items as an auxiliary principle. Article 4-2 introduces universal jurisdiction over the crimes listed up in international conventions ratified by Japan. It does not recognize, however, absolute universal

jurisdiction that allows trial in *absentia*. Article 5 describes the validity of a judgment rendered by another State's courts. It negates the international force of *ne bis in idem* or double jeopardy. Japan can initiate a criminal investigation into a case even if another State already tried the case and passed a final judgment thereon. However, when the person has already served either the whole or part of the punishment abroad, execution of the punishment shall be mitigated or remitted.

## **5. Criminal Jurisdiction (2): Extradition and Execution of Foreign Criminal Judgment**

As a domestic law, the Extradition Act of 1953 takes the position that passive extradition can be granted without a special extradition treaty concluded with other States. When requested by another State, a fugitive is to be extradited by a Tokyo High Court's judgment, provided that 9 conditions are satisfied. Naturally, concluding special extradition treaty is a better idea when requesting extradition from another State to implement reciprocal extradition system. For the time being, however, Japan has concluded bilateral extradition treaties only with the US and Korea. It seems that diplomatic procedures are to be instituted when requesting a fugitive's extradition from other States. On the other hand, as to the transfer of sentenced persons, which means the surrender after a final judgment handed down by the court, Act on the Transnational Transfer of Sentenced Persons 2002 regards the existence of bi/multilateral agreement with the State concerned as a pre-requisite to implementing the transfer of sentenced persons between States. Japan thus has ratified the Council of Europe's Convention on the Transfer of Sentenced Persons in 2003 as a multilateral treaty, then 3 bilateral treaties on the transfer of sentenced persons with Thailand in 2010, with Brazil and Iran in 2016. According to the Act on the Transnational Transfer of Sentenced Persons of 2002, Tokyo district court has the jurisdiction over the inbounds transfer, which means execution of foreign criminal judgment in Japan, whereas the Minister of Justice has the authority of deciding the implementation of outbound transfer, with the consent of the person concerned in both cases.

## **6. Criminal Jurisdiction (3): Mutual Legal Assistance**

In order to try a transnational case, another country needs not just the surrender of fugitive but the evidence concerning the case for establishing a crime. As for the position thereof in Japan, Act on International Assistance in Investigation and Other Related Matters of 1980 (last amendment adopted in 2006) also does not regard the conclusion of bi/multilateral treaty as a pre-requisite, consistent with

the Extradition Act of 1953, while a special treaty is required to transfer the sentenced person as a witness to another country in accordance with the position adopted by the Act on the Transnational Transfer of Sentenced Persons of 2002. Article 2 of the Act on International Assistance in Investigation and Other Related Matters of 1980 stipulates three restrictions on assistance as follows. <Assistance shall not be provided in any of the following circumstances: (i)When the offense for which assistance is requested is a political offense, or when the request for assistance is deemed to have been made with a view to investigating a political offense; (ii)Unless otherwise provided by a treaty, when the act constituting the offense for which assistance is requested would not constitute a crime under laws and regulations of Japan were it to be committed in Japan; (iii) With respect to a request for examination of a witness or provision of articles of evidence, unless otherwise provided by a treaty, when the requesting country does not clearly demonstrate in writing that the evidence is essential to the investigation.> Also, article 18 provides for The National Public Safety Commission to take some measures necessary for cooperating with the International Criminal Police Organization.

### The Third Week – Germanic Structure

#### **7. Substantive Criminal Law (1): Legality Principle and Constitutive Element**

Jurisprudence and legal theory in substantive criminal law in Japan heavily rely on German criminal law model, seemingly like in Italy, Spain, Brazil, Korea, and Taiwan. It divides criminal law theory into three fields of analyzing in detail. That is to say, Constitutive Element, Illegality, and Liability (or Responsibility). A crime shall be established when the three conditions are satisfied in full. The Constitutive Element is the first gateway to move on to the second notion called 'Illegality'.

First, the conduct should fall under a concrete provision stipulated in criminal law. This is the well-known concept called 'Legality Principle' or '*nullum crimen sine lege*'. Article 31 of The Constitution of Japan asserts <No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.> Nobody has any objections that criminal responsibility can only be based on a pre-existing prohibition of conduct that is understood to have criminal consequences. Secondly, the criminal consequences should actually take place, apart from attempted crime. A crime of murder could constitute only after someone is killed, while an attempted murder could be established if the person is not dead after the commission. Lastly, therefore, causation (conduct-and-consequence relationship) or causal link is required to bridge the gap between the two parts. The Supreme Court takes the position in principle that factual causation suffices to establish criminal causation, whereas most academics agree to the opinion that some sorts of legal causation as well are necessary for establishing it. According to a common view, criminal causation should be established if it is considered to be general and adequate by ordinary people's experience that the consequence generally occurs from the conduct. This view is called 'Adequate Causation Theory'. In recent years, however, quite a few academics tend to shift their opinions from the Adequate Causation Theory' to what we call 'Objective Attribution Theory' under the influence of the German well-known theory *d.h.* '*Lehre von der objective Zurechnung*'.

## **8. Substantive Criminal Law (2): Illegality**

Even though the accused's conduct comes under a punishable clause prescribed in criminal law, his conduct can be justified for some reasons. Japan's Penal Code of 1907 provides three typical situations of unpunishable conduct as follows. Article 35 states that conduct performed in accordance with laws and regulations or in the pursuit of lawful business is not punishable. Article 36 (1) stipulates conduct unavoidably performed to protect the rights of oneself or any other person against imminent and unlawful infringement is not punishable. Article 37 (1) lays down that conduct unavoidably performed to avert a present danger to the life, body, liberty or property of oneself or any other person is not punishable only when the harm produced by such conduct does not exceed the harm to be averted; provided, however, that an act causing excessive harm may lead to the punishment being reduced or may exculpate the offender in light of the circumstances. Above all, there are some striking

discussions about Articles 36-37, which mean self-defense and necessity. As for self-defense, a number of controversies arise with respect to component parts of the self-defense clause, which are often discussed in the Lay Judge Trial (*Saiban-In Saiban*) introduced in 2009. According to precedent rendered by the Supreme Court of Japan, requisites of self-defense can be divided into two levels. The first is the conditions necessary for circumstances of self-defense, and the second is the conditions concerning self-defense conduct *per se*. The former consists of three elements, namely imminent and unlawful infringement, the predictability of infringement, and aggressive intention. Latest judgment thereof was rendered in 2017, ruling that self-defense should be negated in case that the accused had an aggressive intention against the victim and enough time to ask public and legitimate help to address the predictable attack. Eventually, the accused was not under the circumstances of being suffered from imminent and unlawful infringement. As for necessity, some academics develop interesting discussions about particular issues concerning DV-caused murder, duress by threats, traffic accidents killed by autonomous cars and so forth.

### **9. Substantive Criminal Law (3): Liability**

Liability is the last condition to accomplish the accused's criminal liability. The establishment of Constitutive Element and Illegality does not suffice to be classed as criminal.

This notion of Liability generally consists of intent or negligence, awareness of illegality, criminal competency or mental capacity, and reasonable expectation. Article 38 of the Penal Code of 1907 is the provision of intent and error. Item (1) says <An act performed without the intent to commit a crime is not punishable; provided, however, that the same shall not apply in cases where otherwise specially provided for by law.> It means negligent crime shall be regarded as an exceptional type of crime. Item (2) states < When a person who commits a

crime is not, at the time of its commission, aware of the facts constituting a greater crime, the person shall not be punished for the greater crime> because the accused did not intend to commit a greater crime, which means there was no intent to do anything in the excessive area. Item (3) stipulates < Lacking knowledge of law shall not be deemed lacking the intention to commit a crime; provided, however, that punishment may be reduced in light of the circumstances.> Even if the accused does not know the law that is punishable, the fact could not be an excuse. As for the issue of criminal competency, some recent striking theories assert that only recognition ability suffices to assume the accused's responsibility under the influence of US theories, whereas a component part of control ability has been entrenched under the influence of German theories and regarded as a secondary condition necessary for admitting the accused's responsibility.

In this field, there are some other issues to be discussed, ranging from corporate responsibility, juvenile responsibility, to insanity.

April

The First Week – A Unique System between Inquisitorial and Adversarial System.

#### **10. Procedural Law (1): Investigation and Pre-trial**

Despite a drastic amendment adopted after the Second World War under the instruction of GHQ, the system of criminal investigation in Japan remains rather inquisitorial than adversarial. Law

enforcement agencies have the pivotal power to take the initiative in investigating a criminal case. The police have the primary investigative power in most cases, while the public prosecutors preserve the secondary investigative power in special cases such as economic or corporate crime, political crime, and other crimes that need special legal knowledge to investigate the case. The police or the public prosecutors are the leading actors or a subject of investigation. In this system, the accused is regarded as an object of investigation, even though due process rights are guaranteed by the Constitution of Japan and the Code of Criminal Procedure of 1948. Article 198 (1) of CCP stipulates that < A public prosecutor, public prosecutor's assistant officer or judicial police official may ask any suspect to appear in their offices and interrogate him/her if it is necessary for the investigation of a crime; provided, however, that the suspect may, except in cases where he/she is under arrest or under detention, refuse to appear or after he/she has appeared, may withdraw at any time.> As for this clause, the police and the public prosecutors agree to an opinion that the suspect cannot refuse to appear in their offices and be interrogated where he/she is under arrest or under detention, whereas most academics and defense lawyers interpret this clause as no obligation of being interrogated. This has something to do with an issue of defense lawyer's presence during the interrogation, which has no statutory footing but has been insisted on introducing it by Japan Federation of Bar Association and a number of academics who specialize criminal procedure law. Overseas media criticize the situation in Japan where the suspect could be detained and interrogated for 23 days without the presence of a defense lawyer, while the arrest and the detention warrant shall be issued by a warrant judge and the suspect can access to his defense lawyer at any time with the exception of interrogation *per se* (cf.art.39 of CCP).

## 11. Procedural Law (2): Prosecution and Trial

Apart from some exceptions, only the public prosecutors can exercise the prosecutorial power in criminal cases. They have a great discretionary power whether or not the case should be indicted, informed, or suspended. Article 248 states that< Where prosecution is deemed unnecessary owing to the character, age, environment, the gravity of the offense, circumstances or situation after the offense, the prosecution need not be instituted.> Sometimes the public prosecutors are referred to as a representative of the public interests and are not necessarily regarded as an opponent of the accused. However, the criminal trial is obviously considered to be an adversarial system. The *onus probandi* or the burden of proof continually lies in the prosecution during criminal proceedings. Thus the principle of *in dubio pro reo* applies if the prosecution fails to prove the accused's guilt beyond a reasonable doubt and the accused should be found not guilty and be acquitted. Some foreign observers point out the public prosecutors' discretion is too powerful and influential to find not guilty in practice. In fact,

statistics reveal that the rate of judgment found guilty reaches over 99.9% every year. Dr. Ryuichi Hirano, a former professor at the University of Tokyo, diagnosed the situation as ‘desperate’. In order to activate public trial and regain its vigor, the lay judge system was incorporated into the criminal justice system in 2009. It requires a newly introduced system called ‘Pretrial Arrangement Proceeding’, as a pre-requisite. Article 316-2(1) stipulates that <When the court deems it necessary to conduct productive proceedings of a trial consecutively, systematically and speedily, the court may, after hearing the opinions of the public prosecutor and the accused or his/her counsel and prior to the first trial date, order on a ruling that the case be subject to a pretrial arrangement proceeding as trial preparation for arrangement of the issues and evidence of the case> to facilitate fair and speedy trial. Some rules of evidence are introduced into the current CCP, ranging from judge’s free discretion over the probative value of evidence (Art.318), the inadmissibility of involuntary confession (Art.319,1), the necessity of other evidence that reinforces the confession as a piece of only incriminating evidence (Art.319,2), the exclusion of hearsay /documentary evidence (Art.320,1), hearsay exceptions – consent, a circumstantial guarantee of trustworthiness, reasonable necessity (Art.321-328), to the exclusion of illegally obtained evidence.

## **12. Procedural Law (3): Recent Trends**

The Law partly revising the Code of Criminal Procedure of 1948 was passed and promulgated in 2016. It seeks for the construction of a new criminal justice system responding to the demands of the day. On one hand, a breakaway from relying upon the written statement of examination is contemplated to challenge the criticism grown not just among Japanese academics but foreign observers. Utilizing written statement obtained in the investigation has been widely accepted in the Japanese public trials, notwithstanding the original deponent appears in the courtroom as a witness. On the other hand, law enforcement agencies have come to need new types of measures, corresponding to the emergence of new

types of skillful crime. In this context, seven points of view will be envisaged. First, the voice and video recording of interrogation have been introduced. The whole process of interrogation shall be the object thereof in case of interrogating the suspect physically confined. Secondly, the agreement system, what we call 'Japanese style of plea bargaining', has been incorporated with reference to the US system. The public prosecutor agrees with the suspect/ the accused on the condition of defense lawyers' consent that the public prosecutor would not institute a prosecution or demand a specified penalty if the suspect/ the accused deposes to make clear about other persons' criminal fact. Thirdly, the ambit of interception has been expanded, adding murder, abduction, kidnapping, fraud, and so forth. Interception without an observer could be enforced by using the device that the record cannot be changed through the good use of cipher technics. Fourthly, the cases applied to the system of a state-hired lawyer for the suspect have been expanded to all of the cases the suspect is detained. In addition, when judicial police officers inform the suspect/the accused detained of the right to counsel, they are obliged to give instructions of the way of requesting to the suspect/ the accused. Fifthly, the system of evidence disclosure has been enhanced. The public prosecutor is obliged to deliver the list of evidence in his charge when the accused requests in order to utilize the current system of evidence disclosure. Sixthly, some measures to protect crime victims and witnesses have been ushered in the courtroom by using a video-

linked system. Lastly, new types of investigation have emerged in recent years. In 2017, the Supreme Court finalized the debate about the nature of the GPS-utilized investigation, which should be regarded as statutory-based compulsory measures. It does not belong to the notion of voluntary-based measures, though the special warrant suitable for this measure has not yet been prescribed in the CCP.

### The Second Week – A Protective Model different to Welfare Model

#### **13. Juvenile Justice (1): History and Basic Principles**

It is said that the modern juvenile justice system has stemmed from the juvenile court system as special jurisdiction that was established in Chicago, the US, in 1899. A protective idea rather than a punitive one in juvenile procedure and treatment has expanded around the world since then. Juvenile offending is prone to be spawned from bad or wretched environment revolving around the juvenile, rather than from his obstinate or problematic character. Therefore, not punishment but special treatment should be offered to juveniles who need care and protection against the harmful influence that prevails in the adult-centered society. Also, if juveniles are in lack of proper care and protection, the State should provide them with adequate protection *in loco parentis* or in the place of real parents. In fact, an old British idea of '*parens patriae*' was referred in a US judgment in 1838, where it is recognized that juveniles had to be given protection from harmful conduct or influence and that it was understood as a State's role or obligation. In this context, the conception of 'juvenile delinquency' was born in the US. This idea is different from that of crime committed by adults and has also become widespread around the world. In Japan, under the influence of the US idea, the juvenile hearing court was introduced into the criminal justice system by virtue of the Juvenile Law of 1922. This law juxtaposed the juvenile hearing courts as an administrative body with the criminal courts as a judicial organization and the public prosecutors have not only the primary but definitive discretion over juvenile cases about whether or not the juvenile concerned should be protected or punished. Thus the former juvenile justice system can be regarded as a criminal law for juveniles. After the Second World War, the GHQ strongly recommended that the Juvenile Law of 1922 should be amended because the juvenile hearing courts were administrative bodies that were not suitable for imposing invasive

measures on juveniles from the viewpoint of human right protection. In correspondence to the principle of the separation of power, the juvenile courts should be an independent judicial body like an umpire and focus on judicial diagnosis of the juvenile in trouble.

#### **14. Juvenile Justice (2): Outline of the Juvenile proceedings**

The Juvenile Law of 1949 set up brand-new the family court as a judicial body that has jurisdiction over both family and juvenile cases, where juvenile hearing division belongs to the latter. The separation of power has been actualized between the judicial family court and administrative juvenile institutions. Both functions had been converged in the former juvenile court, which was criticized by the GHQ. According to the current system, the juvenile court is regarded as neutral diagnostic bodies that do not get involved in the treatment of juveniles *per se*. Also, a protection-centered idea similar to the welfare-centered one has been enhanced and thus the primary power of deciding juvenile's treatment has been assigned to the family court. The public prosecutors lost their authority in instituting juvenile proceedings because the juvenile hearing division at the family court has wider jurisdiction over not just juvenile offenders over the age of 13 who could constitute a crime, but also juveniles being conflict with law under the age of 14, and juvenile pre-offenders – who have the risk of offending in the future (Art.3). The family court has exclusive jurisdiction over the latter two cases, which never constitute a criminally punishable offense. Therefore, the family court will impose protective measures - (1) supervision, (2) child welfare institutions, (3) juvenile reformatory (Art.24) - on juveniles, or transfer them to welfare institutions as a welfare treatment. However, as to juvenile offender cases, the police initiate criminal investigation like an adult criminal case, and shall refer the case to the public prosecutors in case that the crime concerned is punishable by imprisonment without labor or more, but shall refer the case to the family court directly in case that the crime concerned is punishable by fine or lesser (Arts.41,42). The public prosecutors in the former cases shall mandatory refer the case to the family court, which will decide appropriate measures, ranging from acquittal, protective measures, to referral to the public prosecutors who do not preserve the discretionary power of suspending prosecution (Art.45 {5}). In this case, criminal proceedings against the juvenile offender will be instituted normally in the district court, though the penalties prescribed in the PC shall be mitigated from the penalties applicable to adults and juveniles under the age of 18 at the time of commission of the crime shall not be executed by death (Arts. 51,52). As an institutional measure, the juveniles found guilty shall be incarcerated in special facilities for juvenile offenders. There are six juvenile prisons across the country.

### **15. Juvenile Justice (3): Recent Changes**

In concert with a global tendency in legislative reform getting tough on youth crime from the late 1990s onward, the early years of the twenty-first century in Japan have witnessed four-time amendments (in the year 2000, 2007, 2008, and 2014) to the Juvenile Law of 1949. In Japan, as well as in most jurisdictions, public outcry over youth violence has led to emphasis within new laws and policies on the protection of society and on a more punitive approach. The well-known 'Youth A' case seems to have triggered off the amendment 2000 that enables the family court to transfer youths under 16 years of age to the public prosecutor who shall indict them for their criminal behavior. Article 41 of Penal Code stipulates that a child below the age of 14 cannot be criminally liable and therefore cannot be convicted of an offense. In respect of the amendment 2007, *Shun Tanemoto* case and *Satomi Mitarai* case undoubtedly made a great impact on the revision that includes some provisions authorizing not just the police power to investigate child cases infringing the penal laws under 14 years of age, but also the possibility of incarceration in the reformatory even if he or she is under the minimum age of criminal responsibility. The amendment in 2008 was made from an increasing recognition of the need of victim involvement in criminal proceedings especially after the enactment of the Basic Act on Crime Victims of 2004, which has expanded the rights of crime victims in all aspects. In addition, the former Juvenile Training School Law was abrogated and

instead, new safeguards were integrated into the Juvenile Training School Act and the Juvenile Classification Home Act in 2014.

### The Third Week – To Prevent Reoffending

#### **16. Corrections (1): Institutional Treatment**

The Penal Code of 1907 provides that the sentenced person should be punished by death penalty, imprisonment with labor, imprisonment without labor, fine, penal detention, minor fine, and confiscation (Art. 9). In reality, the penalty of fine outnumbers the rest of other penalties and is considered to be important especially in addressing not just the breach of traffic rules but corporate crime, while only a little death penalty is sentenced every year and is regarded as an exception even if it is a murder case. To prevent reoffending, however, the importance of institutional treatment has come to attract attention in recent years. In this regard, Act on Penal Detention Facilities and Treatment of Inmates and Detainees 2007 prescribes three contents of treatment for prisoners. Correctional treatment, namely, consists of work, rehabilitative guidance, and educative guidance (Arts. 92,103,104). Production work such as dressmaking and metalworking accounts for over 80% of all prison work. A variety of work is given to inmates in view of the local community's character in every prison. It is true that prison work has the nature of occupational therapy when it pertains to a sense of accomplishment, but it should retain the essence of punishment in principle. The current Act 2007 additionally provides rehabilitative and educative guidance to facilitate the rehabilitation and resocialization of inmates. As for rehabilitative guidance, special programs are initiated and offered to the inmates, depending on the problems they face. These are for drug addiction, sex crime, organized crime, violent crime and so forth. Some types of education program also are offered especially to the inmates who did not receive compulsory education in schools. In practice as well as in theory, the rehabilitative idea is still adopted and implemented to prevent reoffending and hence reduce crime rate as a whole.

#### **17. Corrections (2): Community-Based Treatment**

The notion of community-based treatment in Japan can be divided into three categories, namely, probation, parole, and urgent aftercare of discharged offenders. The Offender Rehabilitation Act of 2007, Article 48, stipulates < The implementation of probation for the following persons shall be

governed by the provision of this Chapter:

- (i) Persons under the protective measures specified in item (i) of paragraph (1) of Article 24 of the Juvenile Act ;
- (ii) Persons for whom release on parole from the juvenile training school is permitted and who are under probation pursuant to the provision of Article 40, as applied mutatis mutandis pursuant to Article 42
- (iii) Persons for whom release on parole is permitted and who are under probation pursuant to the provision of Article 40
- (iv) Persons under probation pursuant to the provision of paragraph (1) of Article 25-2 of the Penal Code.>

Apart from juvenile probation and urgent aftercare of discharged offenders, community-based treatment is normally granted in conjunction with institutional treatment. As for Item (iv) , article 25-2 (1) states that < In a case prescribed for in paragraph (1) of Article 25, the subject person may be placed under probation through the period of suspended execution of the sentence; and in a case prescribed for in paragraph (2) of Article 25, the subject person shall be placed under probation through the period of suspended execution of the sentence. >Volunteer Probation Officers, as well as Probation Officers, are engaged in general community-based treatment, while Rehabilitation Coordinators are engaged in mental health supervision and other responsibilities pursuant to the Act on Medical Care and Treatment for Persons Who Have Caused Serious Cases Under the Condition of Insanity of 2005. It is said that the offenders should be dealt with by rather community-based than institutional treatment because they are to come back to the community anyway where autonomous life is required to cope with some allurements and troubles they face in their everyday life, except in case of capital punishment.

## **18. Conclusion: Challenges Remained**

Several problems can be pointed out in every field of the criminal justice system in Japan. In respect to crime prevention, the governing power of traditional communities is on the wane in concert with the tendency of a rapidly aging population and the decline of the birth rate. In order to maintain the sustainability of communities, both restoring traditional

community power and introducing other types of mechanism, like the NPO, should be juxtaposed in accordance with the status quo of the community in question. Regarding criminal law, the current Penal Code of 1907 is so old that obsolete articles should be removed and amended entirely. For example, abortion is still banned and punished by Articles 212-216, though it is permitted, as a matter of fact, with certain conditions prescribed in the Maternity Law of 1996.

In addition, theories of substantive criminal law are prone to become too complicated to apply to the Lay Judge Trials. There is a very large gap to be bridged between lay and professional people. It seems that lay people should be given enough information and correct knowledge, on one hand, theories *per se* should be simplified more on the other hand. As for criminal procedure law, due process for protecting a defendant's human rights should be enhanced more, especially in the area of the investigation stage. So-called 'Hostage Justice System' should be improved. Related to the juvenile justice system, welfare-oriented measures should be offered more to juveniles under the Child Welfare Law of 1947. In the penal system, the protection of human rights of inmates should be improved and community-based treatment should be facilitated furthermore. In the field of international criminal law, bilateral treaties of extradition and transfer of the sentenced persons should be concluded more with other countries to achieve the idea of the internationalization of

criminal law.