A Brief Historical Review of the Japanese Judicial Welfare in Relation to Juvenile Justice System

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SUMMARY

Judicial Welfare (Judicial Social Work in its practical form) is a practical (substantial) problem solving work whose process is paralleled with legal (normative) problem solving process in "justice system" in a broad sense. With the key word of "normative solution" (justice) and "substantial solution" (welfare) of problems, this article submits a brief review on the Japanese history of Judicial Welfare in relation to Juvenile Justice System. In the 100 years history of Japanese Juvenile Justice System, there have been 4 major epochs. (1) Times of Kanka-in Act 1881 – Children’s protection and education where “welfare” was said to be releasing children from criminal administration of justice and giving them protection and training instead. (2) Times of Juvenile Law 1922 – Juvenile rehabilitation and training, where the Shyonen Sinpansyo (Juvenile Inquiry and Determination Office) and Kyosei-in (Juvenile Training School) were established thus to start the juvenile rehabilitation and training as the assisting welfare administration under the Public prosecutor’s supervision. (3) Times of New Juvenile Law 1948 – Perspectives to Judicial Welfare, where the new law set up the Family Court as the central organisation for the juvenile criminal policy and excluded the involvement of the prosecutors in the juvenile hearings. Here, Justice and Welfare are expected to go side by side and new social work oriented specialists system was established to promote substantial solution of problems instead. (4) A transition period - Dissociation between Justice and Welfare, where the government tries to revise the juvenile law to be more criminal court oriented by introducing public prosecutor’s strong commitment to the juvenile hearings. The present situation seems to be losing balance of Justice and Welfare, though the juvenile delinquency as a whole is not so serious in Japan today.

In Japan’s criminal policies, juvenile offenders were treated most mercifully throughout the history and capital punishment were abolished on all criminals for 347 years (818-1165). Based on this tradition, there has been a long history of experimental research on “justice and welfare” in her modern criminal policies. Started in the early reformatory work movement in 1880s and flourished during the post-war reformation of juvenile law, integration of “welfare” into “justice” system has now become indispensable to substantially solve and mitigate various kinds of social problems, especially those relating to juvenile and family. With great objective and social necessity, the co-operation and development of the two will be further
demanded by the society. (Yamaguchi 1991 & 1999-a)

However, in Japan’s criminal policies, “welfare” in justice system or “judicial social work” has not been discussed in consensus. The author, for a long period of time, has taken it in a broad sense of social work which goes in parallel with the “normative solution” (legal solution) in an attempt to actually solve and mitigate certain social problems (abbreviated as “solution” in the rest of the article). “Justice and welfare” is understood as the “welfare” with the purpose of “substantial solution” (a practical solution as a part of social work) and expected to co-operate and develop with the “normative solution” in the total judicial process. Both normative (legal) and substantial (practical) processes are mutually influenced throughout the whole judicial process holding the value and the aim in common. The author takes the above process as what welfare-in-Justice-system should be and regards it as “司法福祉 SHIHO-FUKUSHI” (judicial welfare or judicial social work). (Yamaguchi 1994).

In the case of juvenile delinquency, the proper legal solution (normative solution) regarding the “delinquency” is expected to go together with the practice of supporting the youth to confront his/her own past and acquire the strength to overcome the delinquency and, at the same time, the practice of helping the victim to alleviate the hardships (substantial solution). Otherwise the “problem” itself will appear again and again by taking different forms!

With the key words of “justice” and “welfare”, and in reviewing the 100-year history from the end of the 19th century to present time by which the present juvenile law is being called for revision again and agreements on children’s rights are ratified, we can suggest that there have been 4 major epochs in the history.

They are (1) from “Kanka Act 1900” (Children’s Reform Home Act) to child protection and education (2) from the former “Juvenile Law 1922” to juvenile rehabilitation and training (3) from enactment of present “Juvenile Law 1948” to judicial welfare. (Moriya 1979). (4) towards re-amendment of “Juvenile Law 1948” (the re-establishment of Public Prosecutor’s hegemony in Juvenile Justice).

The following article presents a brief review on the state of judicial welfare in each period.

(1) “Child Protection and Education”

In 1881, the old Criminal Code determined the leniency or punishment as disposition to criminals of young age. Accordingly, the revised “Kangoku-soku” (Prison Regulations) of 1881 and 1889 set up the “Choji-jo” (Disciplinary Institute) as a place to segregate juvenile offenders from adult criminals and to provide special educational training for those offenders of young age or of deaf-mute handicaps who were exempt from legal punishment. Although with the purpose to provide school education to those prisoners under 16 or children sent to the prison under the petition from their legal parents, Choji-jo actually turned out to be only a place to penalise or punish the children.

In order to release the children from such punitive institution, Yukie Ikekami (a shintoist 1826-1891), Shinkei Takse (a journalist 1853-1924), and Kosuke Tomeoka (a Christian prison chaplain 1864-1934) and many other pioneers started establishing the nonofficial child saving institutions called Kanka-in (children’s reform home) and spread out the reform home movement.
Yukie Ikegami set up the reform-home called "Shinto-kitosyo" (Shintoistic House of Prayer) in Osaka in 1883, Shinkei Takase founded "Tokyo Kanka-in" in Tokyo in 1885, and in 1899, KoskeTomeoka founded "Tokyo Katei-gakkō (Tokyo Home School) which was the home of parent-cottage system for children with the on-the-job training school for the staff. Tomeoka learned the methods of treatment at the Elmira Reformatory and other juvenile reformatories in the States (1894-96) and created original Homes for Children based on amalgamation of East-West Culture. He is one of the distinguished leaders of Japanese prison reform movement having great influence on the further development of Japanese Social Services. (Yamaguchi 1999-b, Hattori 1996).

As a result, the Kanka-in (known as the "Institute to support children's independence" according to the present Child Welfare Law) was recognised by the country through the enactment of Kanka Act (Children's Reform Home Act) in 1900. Accordingly, for children under 14 years old, the work of delinquent children's protection and education was legally established.

Different from Zyukkyu Kisoku (the Poor Law) of 1874 which was of insignificant existence, the first social work regulation as this modern children's welfare legislation was made possible in an early time due to several facts. The legislation itself undertook a part of the country's countermeasures to children's crimes; on the other hand, the Kanka movement was widely spread out as a reform and relief movement led mostly by the charity people. The movement exceeded the area of relief work on delinquent children and became one of the few legislative public works under the Home Office at the time. The above facts, as a result, have promoted the establishment of Japan's social work.

Shigejiro Ogawa (a leading Criminologist and Home Office official in Prison administration) later pointed out that "Children's Reform Home was an institute in which the country (instead of the legal parents) provides the necessary benevolent educational rehabilitation". (Ogawa 1915) As the "limitation on children's freedom rights" was only a mere appearance lacking in substance, with no trust on the administration (criminal policy administration) of justice controlled mostly by public prosecutors at that time, Ogawa showed no clear self-knowledge of "freedom rights of children". In "children's protection and education", "welfare" was the social work to release children from criminal administration of justice. However, it was after all a part of the charity work to assist the criminal policy administration no matter how the public prosecutors in charge of Japan's criminal policies would constantly be criticised by the welfare people.

(2) Times of Old Juvenile Law - “Juvenile Rehabilitation and Training”

As a replacement after the abandonment of choji-jo, the enactment of the existing criminal code and prison law in 1908 raised the age limit from 13 to 17 years old in the Children's Reform Home Act. At the same time, subsidiaries from the national treasury were increased and policies of setting up national reform home and training school of social workers were carried out. As a result, number of reform homes were also increased. However, as criminal policies, the welfare measures of solutions to juvenile delinquent problems were not at all paid attention.
Trying to put the rehabilitation work for the released convicts under its own control, the Ministry of Justice (Public Prosecutors were dominant in the Ministry) appealed for the establishment of "criminal policies for juvenile" within the framework of its own and reported the "drastic increase of juvenile crimes." In this way, it pushed forward the early legislation of "juvenile law" that provided juvenile rehabilitation and training system.

Contrarily, the Home Office and people like Shunko Hayasaki (a governor of Urawa prison), Shigejiro Ogawa and Kosuke Tomeoka started their furious opposition movement from the side of reform and social work. With his theory that putting the reform home-school work under the control of the judicial officials (especially public prosecutors) was actually handing over the welfare of relieving the poor, healing the sick and the work of education, Ogawa focused his criticism on the negative effects of the Public Prosecutors' hegemony. (Ogawa 1915). Holding the same critical views, Tomeoka advocated his "reform home superiority" which proposed that the criminal code only dispose those children who were beyond the reform home treatment but should be legally punished. (Tomeoka 1921). However, because of the restrictions of the time, this opposition movement still lacked its consideration toward children's "freedom rights". As a matter of fact, it didn't propose an original "juvenile-criminal-policy" which would attach importance to children's special characteristics to confront the "criminal policies for the juvenile" by public prosecutors. It turned out to be an opposition movement against the employment of juvenile rehabilitation and training, which had been at the mercy of the public prosecutors.

In 1922, the old Juvenile Law and Juvenile Correctional Training School Act were enacted through the compromise with the limits on the number of juvenile hearing offices and juvenile training schools (the number was to be increased after the enactment). Thus Shyonen Shinpansyo (Juvenile Inquiry and Determination Office) was established as an administrative office under the Ministry of Justice. Shyonen Shinpansyo dealt with both juvenile offenders under 18 years of age remitted to it by public prosecutors and juveniles prone to be delinquent, (Supreme Court 1998). This became the predecessor of the present Family Court but was not a court. Kyosei-in (Juvenile Correctional Training School) was also established thus to start the "juvenile rehabilitation and training system" as the assisting special security measures for delinquent juvenile under the public prosecutor's policy known as "principle of discretionary prosecution". This was called Shyonen-Hogo (Juvenile Protection Scheme), the juvenile version of the "security measures," an effort-taking hard work by Chogoro Miyagi (Morita 1997) from the Ministry of Justice who was the key person in the enactment of the Old Juvenile Law. In this way, as a "welfare" arrangement that was under the framework of the prosecutor's general criminal policies, the juvenile rehabilitation turned out to be mainly a reinforcement work by the prosecutors to dispose those who were exempt from legal punishment.

However, apart from expectations of the policy authorities, the actual work of "juvenile rehabilitation and training" was largely depending on the field workers. It is needless to mention the example of the communication between Junzo Ogawa (who was the first rector of Naniwa Juvenile Correctional Training School<Osaka>) and Koske Tomeoka. Many other Kanka, Syonen-hogo and "acquitted rehabilitation" field workers with the dream of
"education-social work" co-operated and made excellent efforts for the juvenile education and welfare at the time. In general, they actually improved and developed the treatment of criminals and juvenile delinquents. (Yamaguchi 1999-b).

(3) Times of New Juvenile Law – Perspectives on the “Judicial Welfare”

However, social workers claimed that children should not be subject to conviction and punishment for children should only be to those cases that were practically judged as above the rehabilitation framework. Their claims were regarded as a separation from the “Japanese criminal policies for juvenile” and as an effort toward the original independent “juvenile-criminal-policies”. Having experienced the hardships of “wartime juvenile rehabilitation and training”, those social workers developed the new ideas for juvenile justice in the post-war reformation. The new law set up the Family Court as the central organization for the juvenile criminal policies and excluded the involvement of the prosecutors in the juvenile court procedure where Justice and Welfare goes side by side to coordinate normative solution and substantial solution of the problems. The superiority of children’s welfare and rehabilitation has been determined. Moreover, as legislation under Japan’s Constitution, the new juvenile law has suggested the direction for overcoming the weakness in the former juvenile rehabilitation and training that tends to neglect children’s “freedom rights”. It has paid attention to the objective disadvantages of the “rehabilitation”. In this way, the existing Juvenile Law has been enacted and Family Court has been established.

Now, the Family Court is a specialised court dealing exclusively with juvenile and family affairs cases. It has Juvenile Division and Domestic Division. Juvenile Division has jurisdiction over juvenile (those under 20 years of age) delinquency cases and adults criminal (against welfare of juvenile) cases. Police and public prosecutor are not allowed to terminate the juvenile cases by themselves unless they find the juvenile not guilty. All juvenile criminal cases must first be sent to the Family Court for investigation and hearing. At the Family Court, about 70% of juvenile cases are concluded or dismissed after investigation, counselling or casework treatment under tentative probation carried out by Family Court Counsellors.

Professor Kashiwagi, who was involved in the enactment of the new system, pointed out that this system was not “forced by GHQ of the Occupation Forces in the post-war time.” (Kashiwagi1949) It was not only a proposal by the GHQ but a combination of opinions of the Japanese experts with the intention to promote and protect children’s rights to welfare as well as freedom.

Certainly, as witnessed in the family court Tyotei (reconciliation and mediation) of that time, there has been some movement towards the organization of the old Japanese family system maintenance in the family court. However, with the involvement of the judicial officials who proceeded the family court movement, the movement of setting up a new judicial practice called for the development of the introduction of Japanized social casework into the justice administration of a broad sense. This is the prospect for the instalment of the system of “juvenile-criminal-policies” and also the prospect for the solution of the problems through the combination of “the justice and welfare” or “judicial welfare".
(4) Times of Transition – Dissociation Between Justice and Welfare

As soon as the existing juvenile law was enacted, the Ministry of Justice (Public Prosecutors) demanded a revision that required the involvement of the prosecutors and the intensification of the punishment function. However, it was not based on the reflection of the practical achievements in the existing system. It was only a proposal focusing on the involvement of the prosecutors. From the view of the traditional justice, the Family Court has always been an organisation difficult to understand. The acquisition of the recognition inside the judicial circles was even more difficult than the recognition from common people. (Udagawa 1969, Kondo 1959, Toshimori 1957). Working as the public information for the judicial organisation with the social casework function, the Family Court should present its actual achievements in the field. As a result, the development of “Family Court Counsellor” system (occasionally translated as Family Court Investigation Officer or Family Court Probation Officer) turned out to be in urgent need.

The Counsellor system is a system with the judicial clinician as the key person to ensure that the Family Court functions properly as it should. The Counsellor is a social worker in judicial settings, who has a duty to make diagnosis on the case and present “clinical recommendations” to the Family Court Judges or related professionals at any time throughout the procedure. And the counsellor also helps the juvenile and his/her family to overcome their problems throughout the hearing process including short-term treatment in “tentative probation”. In this way, the research and practice of Japanized casework technology have been actively developed through the co-operative effort of family court counsellors, family court judges, family court medical staff, clerks and probation officers of Ministry of Justice. In 1957, the Supreme Court of Japan established Kateisaibansyo-Tyosakan-kensyusyo (Graduate Institute of Family Court Counsellors) exclusively for their education and research. The people who have BA or equivalent and have passed the first-class national official’s examination in social work, psychology, sociology or pedagogy (or, recently, laws) can be employed as Assistant Family Court Counsellor. After two years (recently one year) successful professional field training at each Family Court as assistants and one year advanced theoretical training at this Graduate Institute of Family Court Counsellor, they are entitled to promote to the fully independent FCC (Yamaguchi 1971). They altogether have made enormous achievements in the field.

The future of the “co-operation and unification of justice and welfare” through the independence of the “juvenile-criminal-policy” has been announced. The diagram bellow may show some aspects of their achievements.

Presently, the Family Court is under a different situation. (Kajita 1993). The government has laid a bill to revise the juvenile law before parliament this summer so as to empower the public prosecutor to have hegemony over juvenile hearings of Family Court. But the bill has not been taken into deliberation yet. The Japanese Bar Association is in opposition to the bill. The Association is of the opinion that the revision of the Juvenile Law in such a way will dissociate welfare from justice and encourage much more punitive approach to juveniles even though the number of juvenile offenders are not seriously increasing.

Together with other international treaties, “the Convention on the Rights of the Child “is
also setting up both international and domestic standards for the juvenile jurisdiction. Present Japanese society is facing the quite serious school education problems rather than juvenile delinquency, though super-serious juvenile offence occurs occasionally. So these problems have widely and urgently required the necessity of the co-operation between justice and welfare. Needless to say that such judgements of US Federal Supreme Court as “In re Gault, 1967” “In re Winship1970” “Breed v Jones 1975” etc are influential for us to some extent, though the juvenile hearing system in the Japanese Family Court is quite different from that of the States in reality. Certainly it is always necessary to make definite and develop proper judicial procedures much more suitable for the juvenile. For instance, the proper clinical “due process” = “clinical fairness” in the judicial clinical field must be established as soon as possible. It is also necessary to develop more welfare approach to promote new legal aid system, the victim support system and the special system to assist the practice of the rights for the handicapped. The judicial application and support, which includes the guarantee of the interpretation service for the suspects or defendants of foreign nationalities, should also be developed to achieve the “internationalisation” in a true sense. The value of the co-operation between justice and welfare is the true consciousness of the “human rights” of other people and of one’s own. It can only be achieved through the process of the proper integration of “normative solution” and “substantial solution” of social problems, and through the experiences of “being respected as humans” in the various kinds of judicial processes. The same point is truly and exactly expressed in Article 40 of the Convention of the Right of the Child. It stipulates that the child is acknowledged with the right to be treated in such a way as to become much more aware of his/her own respects and the value of himself as a human being. In this way, the child’s sense of respect for human rights and the fundamental freedoms of
other people will be much more strengthened.

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All books and journals above, except Hattori, A.’s work (1996) and Supreme Court publication (1998), are all written in Japanese.
围绕“司法”和“福利”的回顾与展望

[概 要]

在我国，关于近代刑事政策的“司法和福利”的实践性摸索有着长久的历史。这一摸索始于一八八〇年代的早期感化事业（即社会事业）运动，经历了战后的少年司法改革，两者的连携开花结果，成为当今对各种社会问题进行“实质性解决・缓和”的不可缺的各种事业中的一项，具有客观必要性和社会必要性。作为这一事业，“司法和福利”的连携发展更受期待。

但是，在日本，对于“司法和福利”尤其是“福利”，各派理论主张各有其所以，在论点上并未获得一致。长久以来，笔者认为“司法和福利”的理想关系应是两者的统一和结合。具体而言，这就是在通过“广义的司法”来解决・缓和某一类社会问题的过程中，同时实行对问题的“规范性解决”（即通过和当事者的共同作业来强化当事者的克服问题能力）。在司法过程中，将力求“实质性解决”（即作为社会事业来解决问题）与规范性解决相互连携统一结合。这一连携结合才是“司法和福利”的理想关系（注 2）。以青少年的不良行为作为一例，在对“不良行为”实行适应于少年的司法解决（即规范性解决）的同时，援助该少年获得自身的辨别过去・克服不良行为的力量（即实质性解决）。这一司法解决与援助实践的统一结合（在此没有矛盾冲突）是理想的状况。

以这样的“司法”和“福利”作为关键词，回顾我国上世纪迄今的百年历程，至完成现行少年法的再修改以及有关儿童权利条约的批准，我们可将这段历史分成三大时期：第一时期为“感化法”的制定－儿童保护期。第二时期为旧少年法的制定－少年保护期。第三时期为现行少年法的制定－司法福利期。（注 3）以下各个时期中的“司法和福利”的状况作简单的回顾说明。

（1）“儿童保护”时期

众所周知，旧刑法制定了有关对少年犯罪者的宽大量刑及惩治处分。与此相应，明治 14 年（1881 年）和明治 22 年（1889 年）制定的监狱法修改规则设置了惩治所，作为“对处于无罪的幼年犯罪者以及聋哑犯罪者的惩治场所”。虽然该所对不满 16 岁的囚犯以及由法律上的父母请愿而入所的子女实施学校的教育，但实际上只是成为一个“刑罚惩治或处分孩子目的产物”（小河滋次郎之语）。之后，为了把儿童从这类惩治所中拯救出来，由池上雪枝、高濑真卿和留冈幸助等人发起推进了感化院的设立。这一运动得以全国性推广，并于明治 33 年（1900 年）通过感化法的制定，感化院（即今日的儿童福利法中的“儿童自立支援设施”）得到了国家的认可，由此成立了具有法律依据的“儿童保护”事业。

不同于存在感微薄的救济规则（明治 7 年／1874 年），可谓我国最初的近代儿童福利法的这一社会事业的立法能够早期得以实现的原因，在于此法承担了幼年犯罪对策的一部分。另外，以慈善事业家为中心的感化救济运动的推广扩大超越了不良儿童救济事业的范围，成为当时我国少数的受内务省掌管的立法公共事
业，由此推进了日本社会事业的建立和发展。

然而此后，小河滋次郎（日本的首要犯罪学家和负责监狱管理的内务省官员）指出“儿童感化学校只是国家代替亲权者来对孩子实行恩惠性的教养保护的设施”。

(注 4) 正如儿童的“自由制限”只是单纯的外表而无实质内容，由于对当时的司法部（即刑事政策当局）的不信任，小河未能显示出对“儿童的自由权利”的明确觉悟。儿童保护中的“福利”应是让儿童免于受刑事司法的儿童解放事业，但无论掌管日本刑政的检察官如何提出批评意见，它实际上还是成为了补充完整日本刑政的慈善事业的一部分。（注 5）

(2) 「少年保护」时期

1908 年设定的现行刑法・监狱法作为废除惩治所后的代替措施，实施了感化法年龄的提高，国库补助的增额，开设了国立感化院及社会事业职员培训所等政策，感化院数也得以增加。但在刑政上，不良儿童问题的福利解放政策（即儿童保护）并未得到重视。掌管出狱者保护事业的司法省在这一刑政的范围内提倡必须完成“以少年为对象的刑政”，向社会呼吁“少年犯罪激增”的状况，推进了“少年保护”立法的早期实现。

对此，在感化事业、社会事业方面，内务省及早崎春香（他作为监狱官僚努力改良监狱而屡遭挫折而转入了社会事业）和小河滋次郎等人（推进感化运动的诸位）以及留冈幸助等，展开了猛烈的反对运动。小河的理论只抓弊端批评，(注 6) 认为将感化事业转移所属于司法官之于是将教养・教育・治疗等社会事业的行政转入司法官僚之手。而留冈幸助也作了同样的批评并主张感化优先主义（保护优先主义），提出只对那些不能接受感化待遇而必须处之刑罚的儿童进行司法处分。

(注 7) 然而，这一反对运动因受到时代的制限，缺乏对儿童的“自由权利”的考虑。由检察总署提出的“以少年为对象的刑政”是重视儿童特性的独特的「少年刑政」，但反对运动其实是与这一「少年刑政」对峙，是拒绝采用儿童保护的活动。

1922 年，通过少年审讯所及矫正院的设置数量的决定等妥协（少年法制定后开始增多设置数），旧少年法・矫正法得以制定，设立了作为行政机构的「少年审讯所」和「矫正院」，从而开始了对检察署的起诉便利主义进行补足完善的保安处分的「少年保护」。这就是由担负设立少年法的中枢责任的宫城长五郎苦心创作的「司法保护」(注 8) 的少年版。

由此，少年保护事业成为在检察署刑政的范围内既然属于司法刑政又作为“福利”措施，主要由检察署对被免除法律惩罚的人进行刑政的补足完善业务。然而，除了政策当局作的各种设想努力、「少年保护」的实际工作绝大部分是依求了现场的人员。无须以首席浪速（大阪的旧称－译者注）少年院长的小川信次和留冈幸助的交流为例，其他的提出“教育社会事业”理想的「儿童保护」「免因保护」等现场工作人员都与临床研究专家携手并进，为目前少年的教育・福利而花费苦心努力。总体而言，犯罪者・不良少年的待遇改善・发展主要是依求了这些现场的工作人员。
（3）对「司法福利」的展望

与上述相反，社会企业家们主张不要给儿童上刑，而只对那些被判断为超过更生范围的儿童实行处罚。（这也是具有日本特色的「以少年为对象的刑政」的另一表现，是独特的「少年刑政」的主张。）经历了“战时少年保护”的苦难，这一主张要求把家庭裁判所当作少年刑政的中枢机关，从而排除了少年审判中的检察官的干涉，在战后改革中设立制定了儿童福利优先・保护优先的少年法。

新少年法的制定同时作为日本国宪法下的立法之一，显示出克服儿童保护及少年保护中的轻视“儿童自由权利”的弱点的方向，也着眼于“保护”中的客观的不利益性。由此，正如从事制定新少年法的柏木教授所言，该法并非战后的GHQ（盟军总部）强加于日本的，而是在听取了国内先进们的意见，力求于保护自由权利的情况下制定完成的。当然，当初家庭裁判所中的家庭案件的处理也显示出力求维持古老家族制度的动态。但是包括那些推进家庭裁判所运动的司法官僚在内，这一创造出新司法实践的运动在广义的司法内倡导了social case work（涉及社会问题的个人或家庭的个别指导／个案研究的工作－译者注）。「少年刑政」系统的确立，带来了对通过“司法和福利的连携・统一结合”即「司法福利」来解决问题的展望。

（4）司法和福利的乖离

现行少年法公布之后立刻受到了来自法务当局的关于以检察官的参与・强化处罚功能为轴心的再修改要求。但这并非对现行体系的实践成果加以鉴定反省，而只是一味要求检察官的参与。传统上讲，家庭裁判所在司法上属于令人难以理解的机关，在司法部门内若想获得认可要比一般国民的认可更为困难。（注 9）这是因为它作为拥有社会个案研究机能的司法机关，又同时是一个报导机关，首先必须显示出其业务的实际成绩，这意味着急需充实调查官制度。调查官制度即为了使家庭裁判所名符其实而设立以司法临场家为中心人物的调查制度。由此通过众多的裁判官、家庭裁判所调查官、法务教官、保护观察官和技术官等人，个别指导工作的（case work）的技术得到了广泛的介绍，研究实践也得以积极展开，在实际业务中取得了丰硕的成果，并预告了少年刑政的自立及司法和福利的“连携・结合”的未来。

然而，近年来的家庭裁判所面临着新的现象。（注 10）当今，和其他的国际准则一样，「儿童权利条约」对少年司法显示了国际和国内的基准。适合于少年的适当司法手段及司法临场中的适当手段，即“临场的公正性”（fairness）必须得以明确化和发展。与此同时，法律扶助制度的发展、被害者援助的发展、身心残疾者的权利行使的特别援助、以及包括外国人嫌疑犯・被告人的翻译保障等不在于国际化之名的司法活用支援的发展，这一系列通往司法和福利的共同连携之路的社会必要性正在日益高涨。司法和福利的连携的价值在于通过“实质性解决”由国民提出的一定的问题，并且在各种司法过程中通过「作为人被尊重」的体验来真正觉悟他人和自己的「人权」。儿童权利的条约中的第四〇条指出：儿童“必须
有权接受处理来进一步认识自我的尊严以及人的价值。通过这种处理方式，儿童可以加强对他人的人权以及基本自由的尊重心”。这一条约所说的正是司法福利连携的真正价值。（注 11）

注释
（1）拙著「司法福利论」1991年 密涅瓦书房 日本社会福利学会「讲座・战后社会福利的综括和 21世纪的展望」第一卷 1991年 道梅斯出版
（2）拙稿「司法福利的发展」（加藤・野田・赤羽编）「司法福利的焦点」1994年 密涅瓦书房
（3）第二和第三时期间其实穿插了感化法的修正－少年教护法的制定（昭和 8／1933年）时期。但在本稿中，笔者认为它是旧少年法和感化法的惩戒要素而加以批判，是在重视教育的保护以及重视社会内待遇和科学对应的运动中得以成功的议员立法。此项考察在本文中省略。守屋克彦在「少年的非行和教育」（1977 年劲草书房）中描述了其他的时代特征，提出了珍贵的意见。
（4）小河滋次郎 「如何采决少年裁判所法」 p 26
（5）拙稿「司法福利－通往社会回归的路／司法和福利的相克与连携」（「像片插图集－日本的社会福利」 第 2 卷 日本图书中心 1999 年） 在此阶段，还不能称之为社会福利，仅假称为福利。
（6）小河滋次郎 同上 p 28
（7）留冈幸助 「从儿童保护的见解来论少年法案」 （「人道」188 号）
在此可见战后新少年法中的儿童福利优先・保护优先主义的萌芽。
（8）森田 明 「大正少年法的施行和“司法保护”的观念」 （「犯罪社会学研究」22 号）
（9）宇田川松四郎 「家裁的窗口」 1969 年 法律文化社 岁森薰信（原检察官事务管理）在「检事」（1957 年 平凡社）中回顾了当时的检察官的家族裁判所实际事务，描写了当时令人焦虑的气氛。
（10）翅田英雄 「保护主义的现实和课题」（「刑法杂志」33 卷 2 号）
（11）由于本稿的特性，没有提及与高龄社会相适应的司法和福利的连携结合问题。

本稿的英文题目：A Brief Historical Review of the Japanese Judicial Welfare
in relation to Juvenile Justice System

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