

On the Concept of the Pre-Delinquent Juvenile in Japan: Its Construction and the Impact

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I. Introduction

For a long time—about half a century, in Japan, the juvenile justice system did not change drastically. But, in 2000, several salient murders, which, in the late 1990's, juveniles had committed and the press had sensationalized, urged legislators to the significant revision of the Juvenile Law of 1948. For example, some things that were revised: the presence of prosecutors at certain juvenile trials, the notifying of crime victims about the result of the juvenile adjudication, and the lowering of the age at which juveniles can be transferred to prosecutors for criminal trial, which was 16 and over but now is 14 and over. In this revision, both representatives and researchers focused only upon the clauses regarding juveniles that commit some serious crime. Therefore, they didn't dispute comprehensively and radically the problems of the juvenile justice system including the concept of the pre-delinquent juvenile. For that reason, their discussion may appear to be localized and makeshift.

In this paper, we'll examine the concept of the pre-delinquent juvenile in the juvenile justice system in Japan. Through this examination, it will be made clear how this concept has been constructed by three branches of government: the legislature, the judiciary, and the administration. While interacting, the agencies have fabricated a label of the pre-delinquent juvenile for about 50 years. And, this label has been stuck to juveniles until now. After these analyses, the framework of such construction will be shown in this paper. Thereby, hopefully, we can obtain

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some clues for a resolution of the problems in Japan's juvenile justice system.

Before beginning to examine the concept of the pre-delinquent juvenile, we need to clarify the definition of the pre-delinquent juvenile.

In Section 1 of Article 3 in Japanese Juvenile Law, delinquent juveniles are categorized as juveniles that commit a crime, juveniles under 14 years old who violate criminal law, or "pre-delinquent" juveniles. The third type of juveniles are those who perpetrate some "pre-delinquency." "Pre-delinquency" is thought to be a symptom of a tendency toward committing crime; for example, running away from home, violence within the family, legal but harmful drug use, and schoolgirl prostitution that is disguised as only financial support for living. Even if an adult perpetrates some "pre-delinquency," he/she will be never turned over to a court. The legal notion of "pre-delinquency" is applicable only to a juvenile—a person under 20 years old. According to the provision in the Juvenile Law, pre-delinquent juveniles are defined as "juveniles who show any of the following behaviors, and have probabilities of committing crime or, if under 14 years old (that is to say, not criminally responsible), violating criminal law in the future in the light of their personality or environment." And, the behaviors are composed of four types of behavior: (i) "to have a tendency not to be subject to the due supervision of guardians," (ii) "to keep away from home without due reason," (iii) "to hang out with a person who is criminal or immoral, or at an indecent place," and (iv) "to have a tendency to commit an act that harms the morality of him/herself or others." Then, based on the interpretation of the statutory definition of pre-delinquent juveniles, it is supposed that there are two requirements for a Family Court to identify a youth with a pre-delinquent juvenile. The one requirement is "typical pre-delinquent behaviors," and the other is the "probability of committing crime." In the later part of this paper, we'll examine these requirements in detail.

Table 1 shows increases and decreases in the number of juveniles that Family Courts identified as "pre-delinquent" from 1952 to 2004. From this table, we can notice a decreasing trend in the number since the early 1970's.

The revision of the Poisonous and Deleterious Substances Control Law in 1972 may be a primary factor that generated the significant

decrease in the number after that year. In this revision, the abuse of paint thinner and glue that had previously been classified as “pre-delinquency” was criminalized, and the juveniles who abused paint thinner and glue were counted as those who committed a crime, not as those who were pre-delinquent.

But, it should be noted that the decreasing trend in the number that has continued to date cannot be explained only by this transient factor.

Table 1: The Number of the Juveniles Whom Family Courts Identified as “Pre-Delinquent,” 1952–2004

Year	Number	Year	Number	Year	Number
1952	5,261	1970	5,409	1988	2,236
1953	5,830	1971	5,501	1989	2,014
1954	6,806	1972	4,006	1990	1,948
1955	7,045	1973	2,636	1991	1,616
1956	6,504	1974	2,385	1992	1,370
1957	6,720	1975	2,662	1993	1,058
1958	7,623	1976	2,717	1994	891
1959	6,358	1977	2,767	1995	795
1960	5,921	1978	3,104	1996	892
1961	5,546	1979	3,109	1997	837
1962	5,810	1980	3,437	1998	885
1963	6,423	1981	3,138	1999	872
1964	6,448	1982	3,285	2000	1,000
1965	7,153	1983	3,536	2001	1,063
1966	6,966	1984	3,234	2002	1,061
1967	6,754	1985	2,920	2003	919
1968	6,659	1986	2,536	2004	963
1969	6,399	1987	2,558		

SOURCE: Annual Reports of Judicial Statistics for 1952–2004.

Through this paper, we'll illuminate another transformation of a category of the pre-delinquent juvenile that has affected the trend.

II. Disputes Over the Statutory Definition

Historically, in the Juvenile Law of 1922, a category of the pre-delinquent juvenile was established as one of the categories of the juveniles who should receive some protective measure at Juvenile Inquiry and Determination Office. However, in this provision, the “probability of committing crime” was the only requirement for being considered a pre-delinquent juvenile.

After World War II, the general headquarters of the U.S. Army set out to renew the juvenile justice system in Japan. They intended to make it much more educative and different from the criminal justice system for adults, in the track of the U.S. Moreover, they attempted to introduce a clause of “status offender” into the new Juvenile Law in Japan. However, any requirement similar to the “probability of committing crime” was not contained in this clause. Therefore, to be exact, the clause of “status offender” was distinct from that of the pre-delinquent juvenile in Japanese Juvenile Law.

While the officials and practitioners of the Ministry of Justice in Japan wanted to keep the framework of the Juvenile Law of 1922 including the provision of the pre-delinquent juvenile in the new Juvenile Law, the officers and researchers of the Public Safety Division (PSD) in the Civil Intelligence Section (CIS) of the general headquarters tried to follow some of the models in the U.S. thoroughly (e.g. the standard juvenile court act of 1943) including the clause of “status offender.”

Moreover, there was another conflict of interest among the sections of the general headquarters and the ministries of the Japanese government. The Ministry of Justice and the section of the general headquarters that kept it under control—CIS, especially its PSD—formed one interested party, and the Ministry of Health and Welfare and the section of the general headquarters that administered it—the Public Health and Welfare Section (PHW)—formed the other. In the process of the legislation of new Juvenile Law, each of the interested parties sought to obtain the jurisdiction over misbehaving children. The stakeholders in the Ministry

of Justice and CIS hoped to make certain courts deal with such children. On the other hand, those in the Ministry of Health and Welfare and PHW wished to make Child Guidance Offices care for them. As a matter of fact, these ministries—an agency in charge of the judiciary and that in charge of the administration—had competed for the jurisdiction over misbehaving children since the legislation of the Juvenile Law of 1922.

As a result, these Japanese and American participants in the arena of policymaking disputed and bargained with each other over whether the clause of “status offender” should be introduced into the new Juvenile Law and which agency should hold the jurisdiction over misbehaving children. We can retrace the trail of the disputes and bargaining through the drafts and bills of the new Juvenile Law and several documents.

Table 2 shows how the provision of the pre-delinquent juvenile in the Juvenile Law and the drafts and bills of its amendment was changed regarding the term of “pre-delinquent juvenile” and the two requirements.

Table 2: The Transition of the Provision of Pre-Delinquent Juvenile in the Juvenile Law and the Drafts and Bills of Its Amendment

	The Term of “Pre-Delinquent Juvenile”	The Requirement of “Typical Pre-Delinquent Behaviors”	The Requirement of “Probability of Committing Crime”
The Juvenile Law of 1922	X		X
The Draft of January, 1947	X		X
The Draft of December, 1947 (drawn up by the PSD)		X	
The Draft of January, 1948	X	X	
The Draft of February, 1948 (drawn up by the PSD)		X	
The Draft of April, 1948		X	
The Draft of May, 1948		X	
The Bill of May, 1948		X	
The Bill of June, 1948	X	X	X
The Juvenile Law of 1948	X	X	X

* An X signifies the existence of the term or the requirements in the provision of pre-delinquent juvenile.

The draft of January, 1947, which the officials of the Ministry of Justice drew up, contained this term and the requirement of the “probability of committing crime” as well as the Juvenile Law of 1922.

But, the PSD rejected this draft and drew up a tentative draft (the draft of December, 1947) by itself. In the tentative draft, we can find the clause of “status offender.” In this clause, the typical pre-delinquent behaviors are the sole requirement for courts starting juvenile trial.

In turn, the officials in the Ministry of Justice drew up their new draft (the draft of January, 1948) in which the term of “pre-delinquent juvenile” was used. However, in the article of “pre-delinquent juvenile,” there was only the requirement of typical pre-delinquent behaviors.

Again, the PSD rejected this draft, and submitted its own completed draft (the draft of February, 1948) to the Ministry of Justice.

Then, based on the completed draft of the PSD, the officials in the ministry drew up drafts for April and May, 1948 and the bill of May, 1948. We can find the clause of “status offender” in all these drafts and the bill.

But, finally, the disputes and bargaining between the PSD and PHW caused the officials in the Ministry of Justice to draw up the bill of June, 1948 that contained the term of “pre-delinquent juvenile” and the two requirements. This sudden and drastic transition was said to be a product of the “compromise agreement”⁽¹⁾ between the sections of the general headquarters.

As a result of these disputes and bargaining, the two requirements — “typical pre-delinquent behaviors” (that stemmed from the clause of “status offender”) and the “probability of committing crime” — were laid down in the new Juvenile Law of 1948.

Consequently, the concept of the pre-delinquent juvenile in statutory law became narrower than that in the former Juvenile Law of 1922 and the clause of “status offender.”

And also, it was enacted that Family Courts could only deal with pre-delinquent juveniles, not a wide range of misbehaving children.

⁽¹⁾ Howard Meyers, *Memorandum for the Record, Bill for the Amendment of the Juvenile Law*, June 24, 1948, Legal Section, GHQ/SCAP Record Sheet No. LS-10095, National Diet Library, Tokyo.

Therefore, it meant that Child Guidance Offices would have to care for neglected children and dependent children. What's more, the new Juvenile Law stipulated that pre-delinquent juveniles of less than 14 years old must be initially dealt with by Child Guidance Offices ahead of Family Courts.

After the enactment mentioned above, legislators have not made any amendments to the provision of the pre-delinquent juvenile for the Juvenile Law of 1948.

Hence, the judiciary has played the primary role in forming and transforming the concept of the pre-delinquent juvenile.

III. The Influence of the U.S. Supreme Court Decisions

After the enactment of the new Juvenile Law, the judiciary—specifically, Family Courts—has interpreted and applied the provision of the pre-delinquent juvenile. Through such interpretation and application, the judiciary has formed and transformed the concept of the pre-delinquent juvenile. Accordingly, it has become an important participant in the arena of policymaking regarding the juvenile justice policy for the pre-delinquent juvenile.

By analyzing the cases relating to “pre-delinquency,” we can notice three alterations in the interpretation and application of the provision of the pre-delinquent juvenile.

Firstly, the judiciary has limited the range of the cases where the requirement of the “probability of committing crime” is met.

Since the 1970's, courts have attempted to clarify the content of this requirement and they have strictly interpreted the requirement. Until the 1960's, Family Courts did not try to make its content clear, and they applied the requirement to the cases of “pre-delinquency,” simply and literally. But, after a decision of the Nagoya High Court in 1971⁽²⁾, in which the judges showed their strict interpretation of the requirement, Family Courts have gradually come to clarify the content of the requirement. According to the current prevailing interpretation of the require-

⁽²⁾ Nagoya High Court decision of October 27, 1971, *Monthly Bulletin on Family Courts* 24, no. 6 (1972): 66–71.

ment of the “probability of committing crime,” unless an alleged pre-delinquent juvenile shows a high degree of risk in committing certain crime and unless the judge can show almost exactly what crime the juvenile is expected to commit, the requirement will not be met.

Moreover, the other requirement—“typical pre-delinquent behaviors”—also has been viewed as uncertain. Some legal scholars have criticized this requirement for its vagueness. They have pointed out that the meanings of the terms that are important parts of the requirement, such as “due,” “criminal,” “immoral,” “indecent” and “morality,” are all so vague and dependent on a sense of personal value that the principle of due process of law may be infringed.

Secondly, in the fact-finding process of juvenile proceedings, the judiciary has learned to acknowledge facts constituting a crime in place of those constituting a “pre-delinquency,” when possible.

Since family court judges have considered facts constituting a crime to be obvious, and those constituting a “pre-delinquency” to be ambiguous, they have been reluctant to acknowledge facts constituting a “pre-delinquency” for a juvenile. In the cases after the 1970’s, we can observe such marked tendency in family courts. Recently, when it turns out that an alleged pre-delinquent juvenile has committed a crime that the judge expects him/her to commit from his/her “pre-delinquency,” the courts have come to acknowledge only facts constituting such crime, not those constituting the “pre-delinquency.” In this case, they theorize that facts constituting a “pre-delinquency” are absorbed into those constituting a crime, because the former is a subsidiary issue, as compared with the latter.

Thirdly, in determining a final disposition for a pre-delinquent juvenile, the judiciary has placed importance on the gravity of facts constituting a “pre-delinquency” rather than his/her needs for protection.

As I mentioned above, after World War II, the Japanese juvenile justice system was designed as much more educative and different from the criminal justice system for adults by lawmakers. For this reason, initially, in determining a final disposition for a pre-delinquent juvenile, courts had taken only his/her needs for protection into consideration. However, on

this point, a decision of the Osaka High Court in 1972⁽³⁾ showed a quite distinct opinion from the previous family court decisions. In this leading case, it was held that, when facts constituting a “pre-delinquency” are not so grave, the pre-delinquent juvenile cannot be committed to a juvenile correctional institution, or a Juvenile Training School, even if his/her needs for protection are so high. Since this decision, Family Courts have come to determine a final disposition for a pre-delinquent juvenile, depending on the gravity of facts constituting a “pre-delinquency,” or both that and his/her needs for protection.

As observed above, the leading cases of the High Courts emerged in the first half of the 1970's. And also, since the 1970's, Family Court decisions regarding a pre-delinquent juvenile have shown drastic alterations.

Obviously, these High Court and Family Court decisions were influenced by the U.S. Supreme Court decisions that were renowned for applying the due process clause to the juvenile justice system in the U.S. (e.g. *In re Gault* in 1967⁽⁴⁾). Promptly after the U.S. Supreme Court made these decisions, in Japan, legal scholars and judges translated them into Japanese, and presented and favorably commented them in the journals for judges, especially in the many issues of the Monthly Bulletin on Family Courts. And, in the national conference for family court judges that were held by the general secretariat of the Japanese Supreme Court in 1968, the program agenda was the “guarantee of due process of law” based upon the movement for it in the U.S. Supreme Court decisions. As a result, in the interpretation and application of the provision of the pre-delinquent juvenile, the High Courts and Family Courts have come to show their respect for the principle of due process of law.

Consequently, courts have strictly interpreted and applied the provision of the pre-delinquent juvenile, prevailingly, and the concept of the pre-delinquent juvenile has been far narrower than legislators had expected.

⁽³⁾ Osaka High Court decision of May 23, 1972, *Monthly Bulletin on Family Courts* 25, no. 1 (1973): 105-108.

⁽⁴⁾ *In re Gault*, 387 U.S. 1 (1967).

At the same time, we can observe that courts have changed their attitude toward pre-delinquent juveniles—from a benevolent and guardian attitude to a fair-minded and formal one. This phenomenon seems to show a phase of gradual approximation (and return) of the juvenile justice system in Japan to a criminal justice model.

The changes in the activities of the courts have had a great impact on the activities of administrative agencies.

IV. The Realities of the Implementation

Through the alterations in the interpretation and application of the provision of the pre-delinquent juvenile, courts have heavily influenced the administrative agencies that handle pre-delinquent juveniles—among others, the police.

In this phenomenon, we can observe a form of judicial policy-making.

Since the 1970's, the judiciary has created a juvenile justice policy for the pre-delinquent juvenile through forming and transforming the concept of the pre-delinquent juvenile. The judiciary has emphasized the importance of justice and fairness in dealing with a pre-delinquent juvenile. This policy has been so powerful that it seems that the administrative agencies that have something to do with a pre-delinquent juvenile cannot escape from this power of influence.

In order to examine the effects of this power of influence, we need to divide these administrative agencies into two groups: the agencies which are legally obliged to turn over pre-delinquent juveniles to a Family Court, and those which provide treatment or training for them.

The former agencies include the police, Child Guidance Offices, Probation Offices, and others. Each of them has fabricated a label of the pre-delinquent juvenile and stuck it to many juveniles. However, the label functions as a necessary condition for Family Courts to start juvenile proceedings for a juvenile, and for these courts to adopt protective measures, such as probation, commitment to a Community Home or a Children's Home, or commitment to a Juvenile Training School. Therefore, in fabricating a label for the pre-delinquent juvenile, the agencies which are legally responsible for sending pre-delinquent

juveniles to a Family Court make allowances for what label of the pre-delinquent juvenile the judiciary has fabricated.

According to the Juvenile Law, when a police officer has found a pre-delinquent juvenile, the police officer is obliged to turn over the juvenile to a Family Court or, if under 14 years old, to a Child Guidance Office. However, as courts have strictly interpreted and applied the provision of the pre-delinquent juvenile (and placed emphasis on justice and fairness), the police have learned to avoid sending pre-delinquent juveniles to Family Courts.

In reality, when the police screen the juveniles who were detected and might appear to be pre-delinquent, the police have come to recognize them as “misbehaving juveniles” in place of “pre-delinquent juveniles.” The concept of the misbehaving juvenile was constructed by the police themselves, and it is quite similar to that of the pre-delinquent juvenile. Usually, misbehaving juveniles are dealt with and given some guidance only by police officers and volunteers who live in the community and help them. And, these juveniles are turned over to neither the Family Court nor the Child Guidance Office.

Furthermore, since 1999, the police have come to treat these juveniles through Juvenile Support Centers, by themselves. These centers, where misbehaving juveniles are given advice on their daily life and trained, are administered by each prefectural police department. In the centers, the experts on psychology or education are employed and engaged in counseling and other treatments for the misbehaving juveniles.

A high-ranked officer in the National Police Agency explains this policy in his paper as follows:

“According to Article 2 of the Rules for Juvenile Police Activity, a misbehaving juvenile is defined as the ‘juvenile who doesn’t fall under a category of delinquent juvenile, and who commits an act that harms the morality of him/herself or others: drinking, smoking, wandering at midnight, and so forth.’ Such misbehaving is a deviant behavior which can trigger crime. Therefore, *premising that the requirements for turning over a pre-delinquent juvenile to a Family Court are legally quite stringent...*, in terms of ‘early

detection, rapid measures,' *it may be preferable for the police to find out if there is a possibility of a misbehaving juvenile committing a crime, and to take necessary measures for him/her*'⁽⁵⁾ (emphasis added).

In this way, the police have gradually reinforced their educative and protective functions for juveniles. On the contrary, and as discussed previously, courts have impaired the educative and protective functions.

As a result, by using the category, misbehaving juvenile, the police have enlarged the jurisdiction over misbehaving children, including the juveniles who may fall under a category of pre-delinquent juvenile.

In addition, the changes in social circumstances surrounding Child Guidance Offices also may contribute to that.

In recent years, cases of child abuse that Child Guidance Offices have dealt with have been sharply increasing. According to the Annual Operating Reports of the Social Welfare Administration, the increase rate from 1990—when the statistics for the cases of child abuse started to be taken—to 2004 reached 2,934%: the number of cases of child abuse that the Child Guidance Offices dealt with was 1,101 in 1990, and 33,408 in 2004.

Recently, people have turned more of their attention to cases of child abuse through the media, and child abuse has become a serious social problem in Japan. This could be one reason why the rate has increased.

And, the Law for the Prevention of Child Abuse, which was enacted and went into effect in 2000, prompts people involved in child welfare to actively find out if children are being abused or not.

The number of child welfare caseworkers in Child Guidance Offices is limited. Therefore, the child welfare caseworkers have been swamped with responses to cases of child abuse. And, it has been difficult for the child welfare caseworkers to respond sufficiently to other cases, including

⁽⁵⁾ Ko Shikata, "Shounen no 'Kokoro no Yabure-Mado': Genko-Shounen-Housei ni Fusokusuru 'Hogo' ('Broken Windows' in the Hearts of Juveniles: Lack of a Type of Protection in the Current Japanese Juvenile Law)," *The Chuo Law Review* 112, no. 5-6 (2005): 40 (Author's translation).

those of misbehaving children. Child Guidance Offices may have reached their limits of system capacity.

Coincidentally, Juvenile Support Centers, which each prefectural police department administers, have begun to deal with misbehaving juveniles. As for the treatment of misbehaving children, Juvenile Support Centers are replacing Child Guidance Offices in part.

Turning now to the other group of administrative agencies that handle pre-delinquent juveniles.

These administrative agencies are those which provide treatment or training for pre-delinquent juveniles. They include Probation Offices, Community Homes, Children's Homes, Juvenile Training Schools, and others. A label of the pre-delinquent juvenile is not fabricated by any of them. Their personnel undervalue or neglect a label of the pre-delinquent juvenile in treating or training juveniles to whom such label was stuck by a Family Court, the police, and others. The personnel try to see these juveniles from an educational, psychological, sociological, and medical perspective, not legal. Since the concept of the pre-delinquent juvenile is only legal, it is useless to the personnel. Therefore, unlike the administrative agencies which are legally obliged to turn over pre-delinquent juveniles to a Family Court, the agencies which provide treatment or training for them don't need to make allowances for what label of the pre-delinquent juvenile the judiciary has fabricated.

However, since the juveniles the police and Family Courts recognize as pre-delinquent have been restricted within an extremely narrow range, the pre-delinquent juveniles that Family Courts commit to Juvenile Training Schools and others also have been significantly decreasing.

As a result, the pre-delinquent juveniles that Juvenile Training Schools and others have to treat or train show far-advanced criminality, because they are carefully selected by the police and Family Courts. They often show more advanced criminality than the juveniles who committed some crime.

For instance, according to the data from the Annual Reports of Statistics on Correction and the Annual Reports of Statistics on Rehabilitation from 1995 to 2004, in this decade, the rate of pre-delinquent juveniles being released on parole from Juvenile Training

School was not so high in comparison with juveniles who had committed theft or murder (Table 3).

And, in this decade, the rate of pre-delinquent juveniles committing crime during that parole period was high compared to juveniles who had committed theft or murder (Table 4).

Also, a high rate of pre-delinquent juveniles committing crime during their probation period was striking (Table 5).

In fact, most of the pre-delinquent juveniles the police and Family Courts select have committed some “crime” (and, in some cases, a lot of different “crimes”) which is not legally recognized as crime based on

Table 3: The Rate of the Juveniles Being Released on Parole from Juvenile Training School (1995–2004)

Pre-Delinquent Juveniles (N = 1,693)	Juveniles Who Committed Theft (N = 17,920)	Juveniles Who Committed Murder (N = 305)
93.4 %	95.9 %	85.9 %

Table 4: The Rate of the Juveniles Committing Crime During Their Parole Period (1995–2004)

Pre-Delinquent Juveniles (N = 1,581)	Juveniles Who Committed Theft (N = 17,194)	Juveniles Who Committed Murder (N = 262)
25.6 %	21.6 %	6.1 %

Table 5: The Rate of the Juveniles Committing Crime During Their Probation Period (1995–2004)

Pre-Delinquent Juveniles (N = 3,235)	Juveniles Who Committed Theft (N = 71,728)	Juveniles Who Committed Murder (N = 59)
20.1 %	17.5 %	1.7 %

evidence law or other laws, but which is criminologically thought to be crime.

As remarked above, the courts have heavily influenced both groups of the administrative agencies that handle pre-delinquent juveniles by altering the way the provision of the pre-delinquent juvenile is interpreted and applied.

Above all, the activities of the police department have been affected by such alterations. Consequently, the police have gradually reinforced their educative and guardian functions for misbehaving juveniles. Recently, the National Police Agency is attempting to enact a law to legitimate the ongoing police activities toward misbehaving juveniles.

And, we can observe a type of "street-level bureaucracy"⁽⁶⁾ in these realities of the implementation within the law enforcement agencies. The practitioners in these agencies have been involved in juvenile justice policy-making, as they have wielded discretionary powers to respond to and resolve the problems they have faced.

V. Conclusion

In this paper, we tried to examine how the concept of the pre-delinquent juvenile has been constructed by the three branches of government through their interactions. And, we could observe that the construction of the concept of the pre-delinquent juvenile has had a major impact on the activities of many agencies.

The activities of the police department have been influenced a great deal by the alterations in court decisions relating to "pre-delinquency." The police would like the courts to manage and start juvenile proceedings and adopt protective measures for pre-delinquent juveniles that they have caught. However, at this time, the police can only cater to the concept of the pre-delinquent juvenile that the courts have constructed. Additionally, the courts have emphasized the importance of justice and fairness for pre-delinquent juveniles, while the police have put most of their efforts into treatment and caring for them.

⁽⁶⁾ Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation, 1980), 13-25.

Through the observation of these phenomena in the three branches of government over the concept of the pre-delinquent juvenile, we can assume contradictions of social demands⁽⁷⁾. And, by utilizing this assumption, we can clearly understand the direction and changes in policy among the sections of these branches, including the courts and the police.

Figure 1 presents a matrix of the policy tendencies that are inferred from the combination of the two contradictions. This hypothetical model is a framework for policy tendencies that policymakers consider when constructing the concept of the pre-delinquent juvenile. The model is constituted of two axes of ordinate and abscissa: one axis is a contradiction between the claims for justice and for caring, and the other is a contradiction between the claims based on the stability of the whole society and on the respect for individual juveniles. So, four policy tendencies can be inferred from the combination of these axes: esteeming juvenile's *autonomy*, imposing *sanction* on juveniles, enforcing *conformity*

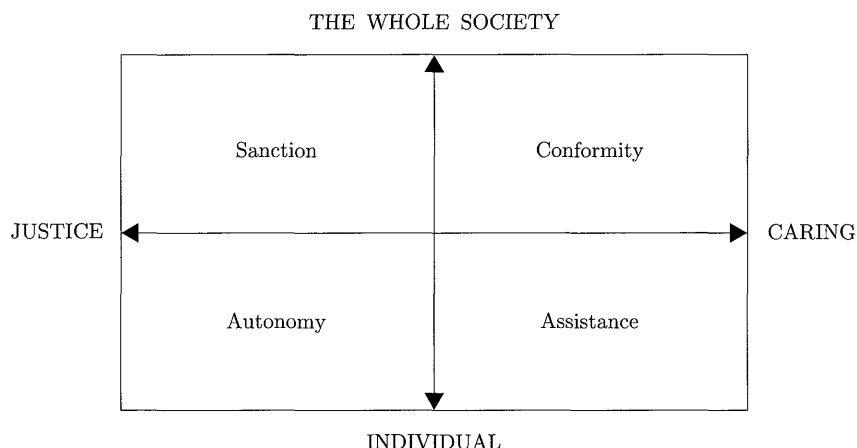


Figure 1: A Matrix of the Policy Tendencies behind the Construction of the Concept of the Pre-Delinquent Juvenile

⁽⁷⁾ For the contradictions of social demands, see Shuichi Susuki, *Keiji-Seisaku (Criminal Policy)* (Tokyo: Seibundo, 1969), 190–191.

my of juveniles to the existing society, and providing *assistance* for a juvenile's growth. Each of these policy tendencies can, in some way, be socially required by people (e.g. "moral entrepreneurs"⁽⁸⁾). Therefore, policymakers should be compelled to strike a balance among the policy tendencies.

As for pre-delinquent juveniles, when the Juvenile Law of 1948 was enacted, Family Courts were designed to place emphasis on *assistance* and *conformity*. But, since the 1970's, the courts have changed their emphasis and set great store on *autonomy* and *sanction* instead of *assistance* and *conformity*. When this happened, the police then changed their emphasis to *assistance* and *conformity*. Furthermore, and recently, Child Guidance Offices, Juvenile Training Schools and others, which originally valued *assistance* and/or *conformity*, have been inaccessible to these juveniles. This leads to more emphasis of the police upon *assistance* and *conformity*.

However, this situation looks like it's being overbalanced again. The police only exercise a strong role in *assistance* and *conformity*. Therefore, policymakers may have to try to strike a proper balance among the policy tendencies again.

In order to strike the balance, for example, they could more positively utilize "educative actions" in Family Courts for pre-delinquent juveniles. The "educative actions," such as volunteer activities and parents meetings, can be taken by family court judges and family court probation officers, for all the juveniles Family Court handles. If the judges hold that the needs of a juvenile for protection have been fulfilled by these actions, the juvenile proceedings for him/her will be terminated. Recently, the effectiveness of these actions has been proven empirically⁽⁹⁾. To more positively utilize the actions for pre-delinquent juveniles, it would be nec-

⁽⁸⁾ Howard S. Becker, *Outsiders: Studies in the Sociology of Deviance* (New York: The Free Press, 1966), 147-163.

⁽⁹⁾ For example, Shigeyuki Ando, Akira Sudo, Makiko Toda, Masamitsu Inomata, Giichi Tanaka, Yoshiko Kawahara, Takayuki Tsukiyama, Tomoko Tajima, and Hiroshi Yoneda, "Kasai-Chousakan no Okonau Hogoteki-Sochi no Jisshouteki-Kenkyu (Practical Study of Educative Actions by Family Court Probation Officers)," *Research Journal of the Family Court Probation Officers* 2 (2005): 1-64.

essary to prompt the police to send these juveniles to Family Courts more willingly.

And, considering the four policy tendencies, we could show other strategies to strike a proper balance: making amendments to the provision of the pre-delinquent juvenile so as to diminish its ambiguousness and adapt it to the needs of the time, and enhancing educative and protective functions of community, school, and family for misbehaving juveniles.

This hypothetical model could be applied to the other problems in the juvenile justice system (e.g. how to treat juveniles who commit serious crime). In that case, to resolve these problems, policymakers would need to keep them from losing the proper balance among the policy tendencies.