

2018

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### Recommended Citation

James Naughton, *Nihon no shInnen no Seigi: A Comparative Analysis of Juvenile Pre-Disposition in Japan and The United States*, 38 CHILD. LEGAL RTS. J. 39 (2020).

Available at: <https://lawcommons.luc.edu/clrj/vol38/iss1/3>

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# ***Nihon no shōnen no Seigi: A Comparative Analysis of Juvenile Pre-Disposition in Japan and The United States***

*By: James Naughton*

## **I. Introduction**

The close of World War II brought a new chapter in the saga of American and Japanese juvenile justice. America's post-war occupation of Japan had a lasting impact on Japan's juvenile justice system ("system"), but it is now time for America to look to Japan for lessons on responding to youthful offenders.<sup>1</sup> As Japan's system and law have diverged in spirit and letter, Japan has seen a sharp decrease in juvenile crime peaking at 12.6% per 1,000 juveniles in 2003 and dropping to 6.77% in 2012.<sup>2</sup> Japan's juvenile crime rate in 2012 was the lowest the country had experienced since 1966.<sup>3</sup> Scholars, such as Kunzo Hiroyuki and the National Police Academy of Japan, credit the system's focus on "the Juveniles' sound development,"<sup>4</sup> with attendant "protective measure[s] for the delinquent minor for the purpose of correcting his/her deficient character and improving his/her environment."<sup>5</sup> As criminologists Tom Ellis and Akira Kyo stated, "In a key sense, Japan's juvenile justice system still reflects the original protective intentions of the founders of the US juvenile justice system," which is reflected in Japan's focus on protective, rehabilitative dispositions.<sup>6</sup> The term *parens patriae* and its connection to the juvenile justice system has a long and complicated history, but we will use it for its general meaning as, the State acting in its capacity as provider of protection for those unable to care for themselves.

Part II of this paper will lay out the structure of Japanese and American juvenile justice to contextualize the discussion of the pre-disposition phase of these two similar, yet unique systems. Part III will examine the possible dispositions of juveniles in both countries and examine their relative effectiveness at rehabilitating youth. Part III also briefly touches on recommendations for improving the juvenile justice pre-dispositions of both countries based on best practices. Part IV concludes that America and Japan both have a shared history to draw from, and that a return to that history would prove fruitful for both countries.

## **II. A Brief History of Japanese and American Juvenile Justice**

Japan's first recorded law on juvenile justice was the Juvenile Reformatory Law ("JRL")

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<sup>1</sup> Kuzuno Hiroyuki, *Juvenile Diversion and the Get-Tough Movement in Japan*, 22 RITSUMEIKAN L. REV. 1, 1 (2005).

<sup>2</sup> Tom Ellis & Akira Kyo, *Youth Justice in Japan*, Oxford Handbooks Online, 1313, (Jan. 2017), <http://www.oxfordhandbooks.com/view/10.1093/oxfordhb/9780199935383.001.0001/oxfordhb-9780199935383-e-65?print=pdf>; see also Kyodo, *Crime rate in Japan falls for the 11th straight year*, JAPAN TIMES, (Jan. 10, 2014), <https://www.japantimes.co.jp/news/2014/01/10/national/crime-rate-in-japan-falls-11th-straight-year/#.Wf8cVBNSxp9>.

<sup>3</sup> Ellis & Kyo, *supra* note 2, at 13.

<sup>4</sup> Shonen ho [Juvenile Law], Law No. 168 of 1948, art. 1, *translated in* (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp/law/detail/?id=1978&vm=04&re=02> (Japan).

<sup>5</sup> Shinpei Nawa, *Postwar Fourth Wave of Juvenile Delinquency and Tasks of Juvenile Police*, 58 J. POLICE SCI. 1, 13 (2006); see also Hiroyuki, *supra* note 1, at 21.

<sup>6</sup> Ellis, *supra* note 2.

of 1900.<sup>7</sup> Japan's law came on the heels of Illinois' Juvenile Court Act of 1899 and adapted a number of ideas from America's juvenile justice system, including the pervasive spirit of *parens patriae*.<sup>8</sup> In its original function, Japan's Family Court was similar to the United States' early juvenile courts, and shared a focus on protecting youth, educating them, and minimizing the stigma associated with juvenile proceedings.<sup>9</sup> Like the United States,<sup>10</sup> Japan's courts also swept up children who were living in poverty, were neglected, or who had committed relatively minor offenses.<sup>11</sup> Japanese law allowed juveniles to be placed in reformatories for offenses such as "living in improper homes, vagrancy, idleness, or even hanging around with the wrong people."<sup>12</sup> As the Japanese and Americans witnessed the effects of net-widening status offenses in their early courts, Japan's approach began to diverge from that of their *senpai*, or predecessor, the United States.

The growth of volunteer reformers and a uniquely Japanese probation service marked the first tangible deviation from the American model of juvenile justice.<sup>13</sup> As Japan's system developed, the Japanese government created a probation service that was, and still is, "staffed largely by middle-class, relatively old, volunteer probation officers."<sup>14</sup> The United States' early courts were, instead, staffed with professional, career probation officers who "were [also] largely untrained, perform[ing] many of the service functions in support of the judge," but who were nonetheless career probation officers.<sup>15</sup> Japan has retained its unique volunteer probation system, but has adopted the United States' professionalism of the probation system.<sup>16</sup> In fact, Japan has fewer than 1,000 professional probation officers, relying instead on a network of 50,000 volunteer probation officers who are private citizens and generally members of the juvenile's community.<sup>17</sup> Japan's system of volunteer probation officers has been part and parcel of Japanese juvenile pre- and post-disposition phases, which we will examine in Part III.

Forty-eight years after Japan adopted the Juvenile Court Act of 1899, the country would again find itself influenced by America's juvenile justice system. During the Allied Occupation, Japan passed its revised Juvenile Law, a law that reaffirmed a commitment to "emphasize rehabilitation over punishment."<sup>18</sup> Law Number 168 called for "protective measures to correct their [juveniles'] traits and modify their environment...for the purpose of Juveniles' sound development."<sup>19</sup> The last major change to Japan's Juvenile Justice Act occurred in 2000, in

<sup>7</sup> ROBERT STUART YODER, *DEVIANCANCE AND INEQUALITY IN JAPAN: JAPANESE YOUTH AND FOREIGN MIGRANTS* 41 (2011).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> CTR. ON JUV. & CRIM. JUST., *Juvenile Justice History*, <http://www.cjcj.org/education1/juvenile-justice-history.html> (last visited Apr. 17, 2017).

<sup>11</sup> Ellis & Kyo, *supra* note 2, at 5.

<sup>12</sup> Ellis & Kyo, *supra* note 2, at 5, (internal quotations omitted).

<sup>13</sup> *Id.* at 6; *see also* KOICHI HAMAI ET AL., *PROBATION ROUND THE WORLD* 177 (2005).

<sup>14</sup> Ellis & Kyo, *supra* note 2, at 66; *see also* Yasuhiro Muraki, *Recruitment, Capacity-Building and Public Recognition of Volunteer Probation Officers in the Tokyo Probation Office*, UNAFEI Resource Material Series No. 96 (2015).

<sup>15</sup> Robert E. Shepherd, *The Juvenile Court at 100 Years: A Look Back*, 6 JUV. JUST. 13, 16 (1999).

<sup>16</sup> *Id.*; *see also* Hiroyuki, *supra* note 1, at 16.

<sup>17</sup> *Japanese Juvenile Justice*, BBC NEWS (Feb. 24, 2001), [http://www.bbc.co.uk/worldservice/people/highlights/010223\\_japan.shtml](http://www.bbc.co.uk/worldservice/people/highlights/010223_japan.shtml).

<sup>18</sup> *Id.*

<sup>19</sup> Shonen ho [Juvenile Law], Law No. 168 of 1948, art. 1, *translated in* (Japanese Law Translation [JLT DS]), <http://www.japaneselawtranslation.go.jp/law/detail/?id=1978&vm=04&re=02> (Japan).

response to Japan's own "get-tough" movement.<sup>20</sup> Coming two decades after America's toughening movement,<sup>21</sup> Japan's new laws lowered the age for transfer from sixteen to fourteen, mandated transfer in cases of homicide or offenses resulting in death, and allowed for victim impact statements.<sup>22</sup> While Japan's development of juvenile justice may roughly trace the trajectory of American juvenile justice, it is important to disentangle the common threads to see the lessons in their deviations.

### A. Structure of Japanese Juvenile Justice

In order to frame our discussion of juvenile justice in Japan, it is necessary to briefly outline the structure of Japanese Juvenile Justice. In Japan, the age of criminal responsibility begins at fourteen years old, and cases are referred to adult criminal courts after the age of twenty.<sup>23</sup> Juveniles between the ages of fourteen and twenty who have committed an offense are referred by police, public prosecutors, or Child Guidance Centers to family court or adult criminal court.<sup>24</sup> Juveniles under the age of fourteen may be referred to child guidance centers for advice or counseling, and these centers may still refer the cases to family court.<sup>25</sup>

Juveniles up to the age of twenty may also receive informal "guidance," the equivalent of a "station adjustment,"<sup>26</sup> and many cases never go further.<sup>27</sup> Of the 108,312 cases that the police cleared in 2013, only 2,590, or 0.02%, were referred to criminal court.<sup>28</sup> Those juveniles may receive a fine, a suspended prison sentence, or a determinate sentence.<sup>29</sup> Once a juvenile is in the family court, 42.2% of cases are disposed with no further action, 41.1% of juveniles are placed on probation, and the remaining 16.7% are spread across referrals to social welfare agencies and institutions or referrals to adult criminal court.<sup>30</sup> Similar to the United States, Japan's family courts have "closed and informal"<sup>31</sup> hearings, with "an emphasis on kindness."<sup>32</sup> Japanese family court's

<sup>20</sup> Hiroyuki, *supra* note 1, at 11.

<sup>21</sup> Jeffrey A. Butts & Daniel P. Mears, *Reviving Juvenile Justice in a Get-Tough Era*, 33 *YOUTH & SOC'Y* 169, 180 (2001).

<sup>22</sup> Hiroyuki, *supra* note 1, at 11; *see also* NAT'L INS. OF JUST., *Victim Impact Statements* (Dec. 4, 2017), <https://www.nij.gov/topics/courts/restorative-justice/promising-practices/pages/victim-impact-statements.aspx> (defining victim impact statements, or VIS's as a victim's description of how the crime affected their life and the lives of their loved ones).

<sup>23</sup> Ellis & Kyo, *supra* note 2, at 18.

<sup>24</sup> SECRETARIAT OF THE JUD. REFORM COUNCIL, *The Japanese Judicial System*, KANTEI [Prime Minister's Office], (July 1999), <http://japan.kantei.go.jp/judiciary/0620system.html>.

<sup>25</sup> *Id.*; *see also* Ellis & Kyo, *supra* note 2, at 17.

<sup>26</sup> LINDSAY BOSTWICK, ILL. CRIM. JUST. INFO. AUTHORITY, *POLICIES AND PROCEDURES OF THE ILLINOIS JUVENILE JUSTICE SYSTEM* 6 (2010) (offering a definition of station adjustment as an "informal handling of a juvenile offender avoiding further juvenile justice involvement . . . [youth] are released to a parent or guardian under specified conditions, such as obeying curfew, attending school, performing community service, and/or participating in social services"); *see also* Mari Sakiyama, *Reintegrative Shaming and Juvenile Delinquency in Japan* at 30 (2011) (noting that: Japanese police also frequently set free guilty offenders without charging a fine as long as they show genuine regret and contrition for their criminal violation).

<sup>27</sup> SECRETARIAT OF THE JUD. REFORM COUNCIL, *supra* note 25.

<sup>28</sup> *Id.*; *see also* Ellis, *supra* note 2, at 18.

<sup>29</sup> SECRETARIAT OF THE JUD. REFORM COUNCIL, *supra* note 25; *see also* Ellis & Kyo, *supra* note 2, at 19.

<sup>30</sup> SECRETARIAT OF THE JUD. REFORM COUNCIL, *supra* note 25; *see also* Ellis, *supra* note 2, at 27.

<sup>31</sup> Trevor Ryan, *Creating 'Problem Kids': Juvenile Crime in Japan and Revisions to the Juvenile Act*, 19 *J. OF JAPANESE L.* 153, 156 (2005).

<sup>32</sup> Hiroyuki, *supra* note 1, at 7–8.

still retain the *parens patriae* spirit, shared during the trans-Pacific legal exchange. As we will explore in Part III, this retained concept has undoubtedly impacted family court dispositions.<sup>33</sup>

### III. A Comparison - The United States' and Japan's juvenile pre-disposition phase and relative effectiveness

Both Japan and the United States have struggled to shape proper dispositions that balance rehabilitation with the appropriate degree of punishment. Japanese family courts, like courts in the United States, have faced criticism from the public that they are too lenient on juveniles and punishment should be more severe.<sup>34</sup> In both countries, the media's persistent coverage of high-profile juvenile crimes leads to calls for harsher penalties and further incapacitation of juveniles.<sup>35</sup> As culture puts external pressure on dispositions, the courts of both countries face internal pressures from a lack of resources and the difficult intersection of rehabilitation and punishment.<sup>36</sup>

In the United States and Japan, after a finding of "delinquency" or need for "protective disposition," both courts receive a form of "pre-disposition reports" from probation officers.<sup>37</sup> These pre-disposition reports contain similar information across both countries with the United States' reports generally looking at "the circumstances of the current offense, the youth's past offense(s), family history, educational progress, and community involvement."<sup>38</sup> Japanese reports, called "social investigations," have their requirements set out in Article 9 of Japanese Juvenile Law.<sup>39</sup> The law states that the social investigation should look to the juvenile's behavior; entire life history; characteristics and environment of the juvenile, of his parent(s) or other persons concerned; and that they should make use of every medical, psychological, pedagogical, and sociological tool available.<sup>40</sup> Some Japanese courts even look to a juvenile's leisure/recreational activities and health conditions to round out the picture of the juvenile and shape appropriate dispositions.<sup>41</sup>

The extensive nature of Japanese pre-disposition reports is one area that the United States could find helpful when looking to improve its juvenile court system. Scholars, such as Jessica Hardung, noted that Japanese family court judges rely on expert advice and have flexibility in

<sup>33</sup> Jessica Hardung, *The Proposed Revisions to Japan's Juvenile Law: If Punishment Is Their Answer, They Are Asking The Wrong Question*, 9 PAC. RIM. L. POL'Y. J. 139, 144 (2000) (noting that "the majority of cases are dismissed and the juvenile is immediately reintegrated into society").

<sup>34</sup> U.N. Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), *Annual Report for 2007 and Resource Material Series No. 75* at 137 (Aug. 2008), [http://www.unafei.or.jp/english/pdf/RS\\_No75/No75\\_00All.pdf](http://www.unafei.or.jp/english/pdf/RS_No75/No75_00All.pdf).

<sup>35</sup> Masami Ito, *Shifting the Scales of Juvenile Justice*, JAPAN TIMES (May 23, 2015), <https://www.japantimes.co.jp/news/2015/05/23/national/social-issues/shifting-scales-juvenile-justice/#.WdjepRNSzdR>.

<sup>36</sup> UNAFEI, *supra* note 35, at 136; *see also* PRESTON ELROD & R. SCOTT RYDER, *JUVENILE JUSTICE: A SOCIAL, HISTORICAL, AND LEGAL PERSPECTIVE* 376 (3d ed. 2011).

<sup>37</sup> Hiroyuki, *supra* note 1, at 6; *see also* OFFICE OF JUV. JUST. & DELINQUENCY PREVENTION (OJJDP) *Statistical Briefing Book* (Apr. 17, 2015), [https://www.ojjdp.gov/ojstatbb/court/JCSCF\\_Display.asp](https://www.ojjdp.gov/ojstatbb/court/JCSCF_Display.asp).

<sup>38</sup> NAT'L JUV. DEFENDER CTR., *Juvenile Court Terminology*, <http://njdc.info/juvenile-court-terminology/> (last visited Apr. 21, 2017).

<sup>39</sup> Shonen ho [Juvenile Law] (adopted July 15, 1948) Law No. 168, art. 9, *translated in* <http://www.japaneselawtranslation.go.jp/law/detail/?id=1978&vm=04&re=02>.

<sup>40</sup> Hiroyuki, *supra* note 1, at 6.

<sup>41</sup> UNAFEI, *supra* note 35, at 141.

disposition options.<sup>42</sup> The Japanese, Hardung argues, have qualitatively and quantitatively better outcomes than their American counterparts.<sup>43</sup> A striking illustration is Tama Juvenile Training School, which houses about 200 inmates from ages twelve through twenty and boasts a 40% employment rate for youth exiting the program, vocational training programs, and opportunities to finish their high school work.<sup>44</sup> Further evidence is found in the juvenile recidivism rates of the two countries. Japan's rate is around 13% for male offenders and 8.3% for female offenders, while states such as Washington, have recidivism rates for males as high as 53% and 46% for females.<sup>45</sup>

The United Nations has also noted that Japanese probation officers who prepare these pre-disposition reports are well-trained.<sup>46</sup> Japanese probation officers generally receive three years of training for their specific role, lectures and on-the-job training, and are part of a "juvenile support team."<sup>47</sup> These teams consist of school teachers, child welfare center officers, and police officers.<sup>48</sup> This is compared to the United States' requirements, which according to the Bureau of Labor statistics, are a Bachelor's degree in any field and occasional on-the-job training.<sup>49</sup>

While Japan is similar to the U.S. in its employment of professional probation officers, it sets itself apart from the U.S. and entire global community in its network of 50,000 volunteer probation officers.<sup>50</sup> These volunteer probation officers supervise local juveniles, often living in their same community, and many of the interventions are conducted from the home.<sup>51</sup> This unique system of Japanese volunteer probation officers may beg questions of feasibility and structure, if applied in the United States. However, counties such as Cook County, IL and San Bernardino County, CA, have piloted similar programs.<sup>52</sup> Further, according to the National Juvenile Justice Network, nearly 78% of Americans support rehabilitation in the juvenile justice system.<sup>53</sup> Even though the U.S. faces difficulties with a less homogenous populations and higher rates of gun violence, the desire to try a new approach to juvenile justice is present. This new approach should be the Japanese probation model. Japanese probation officers work from the juvenile's community, are familiar with its resources, and often know the juvenile's family well. Japan, by allowing their

<sup>42</sup> Hardung, *supra* note 34, at 144–45, 162.

<sup>43</sup> *Id.* at 162.

<sup>44</sup> Shepherd, *supra* note 15.

<sup>45</sup> Hiroyuki, *supra* note 1, at 19; WASH. SENT'G GUIDELINES COMM'N, *Recidivism of Juvenile Offenders* (May 2008), [http://www.cfc.wa.gov/PublicationSentencing/Recidivism/Juvenile\\_Recidivism\\_FY2007.pdf](http://www.cfc.wa.gov/PublicationSentencing/Recidivism/Juvenile_Recidivism_FY2007.pdf).

<sup>46</sup> UNAFEI, *supra* note 35, at 149.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*; see also Lewis et al., *Comparing Japanese and English juvenile justice: Reflections on change in the twenty-first century*, *Crime Prevention and Community Safety: An International Journal*, 75–89 (describing the juvenile justice teams in more detail.).

<sup>49</sup> U.S. BUREAU OF L. STAT., *Occupational Outlook Handbook – Probation Officer and Correctional Treatment Specialists* (Dec. 17, 2017), <https://www.bls.gov/ooh/community-and-social-service/probation-officers-and-correctional-treatment-specialists.htm>.

<sup>50</sup> Nawa, *supra* note 5; see also Ginga Tamura, *The role of volunteers in helping to rehabilitate criminal*, *NHK WORLD* (Nov. 1, 2017), <https://www3.nhk.or.jp/nhkworld/newsroomtokyo/features/20171101.html>.

<sup>51</sup> Ellis & Kyo, *supra* note 2, at 24.

<sup>52</sup> SAN BERNARDINO CTY. PROB. DEP'T, *Probation Volunteers*, (Apr. 15, 2017), <http://joinprobation.org/VolunteersinProdbation.aspx>; *Adult Probation Volunteer Program*; CIR. CT. OF COOK CTY., (Apr. 15, 2017), <http://www.cookcountycourt.org/ABOUTTHECOURT/OfficeoftheChiefJudge/ProbationDepartments/ProbationforAdults/AdultProbationDepartment/VolunteerProgram.aspx>.

<sup>53</sup> NAT'L JUV. JUST. NETWORK, *Polling on Public Attitudes*, (Nov. 2013), [http://www.njjn.org/uploads/digital-library/Update-Polling-Attitudes\\_Jan2014.pdf](http://www.njjn.org/uploads/digital-library/Update-Polling-Attitudes_Jan2014.pdf).

juveniles to stay integrated in the community, mitigates the stigmatizing effects of being associated with the system and provides an anchor in the juvenile's own community.

Japan's volunteer probation officer program is not without its own problems. Professor Hiroko Goto points out that "professional or volunteer, probation officers are not experts at 'curing' repeat offenders, let alone helping addicts forswear their entrenched habits."<sup>54</sup> Japan has attempted to address this gap in efficacy by extending probation periods for juveniles and adults with the hope that "better surveillance" will deter drug use, as addicts receive treatment.<sup>55</sup> The challenges facing Japan's volunteer program present another possibility to look to their trans-Pacific partner, the United States, for ideas. The State of Connecticut has a well-developed juvenile probation program, one that assigns juveniles to specialized officers, and allows a level of legal creativity not apparent in Japan.<sup>56</sup> For instance, a low-risk youth may be placed with an officer who specializes in supervising these youths, a youth with drug addiction may have an officer who is empowered to seek additional resources for the youth, or female youth may be placed in a gender-specific parole supervision program.<sup>57</sup> Japan would do well to look to these layers of supportive probation while maintaining their system's community integrative focus.

No system of juvenile justice or probation is without shortcomings. Japan's focus on community integrative care may come at the expense of real punitive measures or professionals equipped to handle cases with specialized demographics, such as drug offenders. The United States may face criticism for having a punitive approach to juvenile probation that often removes juveniles from communities and imposes sanctions that do not consider the juvenile's community and its resources. Both countries have unique approaches and challenges that are based on culture, media, public pressure, and the complexities of the country's youth. It is time for both to once again look to each other for guidance, and Part IV will explore areas where that conversation may start.

#### IV. Moving Towards Real Justice – Recommendations for Trans-Pacific Exchange and Change

Both Japan and the United States face real challenges when it comes to addressing the problems of juvenile crime. As Jessica Hardung points out in her article, *Japanese Juvenile Justice*, waves of juvenile crime in both countries have led to limits on pre-disposition resources and rehabilitative dispositions.<sup>58</sup> Hardung states that the Japanese system would do well to avoid the procedural formalities that have caused "an unfortunate departure from the central purpose of rehabilitation" in the United States.<sup>59</sup> Hardung is correct in pointing out that the United States has introduced these so-called formalities, such as the right to be represented by counsel and the right to confront witnesses.<sup>60</sup> However, these rights operate more to protect juveniles at the disposition

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<sup>54</sup> Tomohiro Osaki, *Volunteer Probation Officers Face Uphill Battle*, JAPAN TIMES, (Aug. 28, 2013), <http://www.japantimes.co.jp/news/2013/08/28/national/volunteer-probation-officers-face-uphill-battle/#.WOjy-BIrLUp>.

<sup>55</sup>*Id.*

<sup>56</sup> CONN. JUD. BRANCH, *Court Support Services Division* (Apr. 18, 2017), <https://www.jud.ct.gov/cssd/juvprob.htm>.

<sup>57</sup> *Id.*; Richard A. Mendel, *Juvenile Justice Reform in Connecticut: How Collaboration and Commitment Have Improved Public Safety and Outcomes for Youth*, JUST. POL'Y INST. 23 (Feb. 27, 2013), [http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi\\_juvenile\\_justice\\_reform\\_in\\_ct.pdf](http://www.justicepolicy.org/uploads/justicepolicy/documents/jpi_juvenile_justice_reform_in_ct.pdf).

<sup>58</sup> Hardung, *supra* note 34, at 161.

<sup>59</sup> *Id.* at 162.

<sup>60</sup> *Id.* at 154.

stage and may have more of a positive impact at the pre-disposition stage as juvenile procedures become more standardized and less open to paternalism by probation officers and judges. It would behoove both countries to draw from the relative strengths of each other's pre-disposition reporting and use of probation officers.

The United States should re-introduce the *parens patriae* concept into pre-disposition reporting. First, the United States could employ juvenile probation officers with backgrounds in fields such as child development and psychology, or following Japan's example, the United States could create specialized training programs for juvenile probation officers. These programs have led to thorough pre-disposition reports from Japanese probation officers that analyze more aspects of a juvenile's life than United States probation officers currently explore. Second, the United States should introduce funding into communities for the establishment and training of volunteer probation officers. In Japan, community-based probation officers have allowed juveniles to stay rooted in their neighborhoods, connect with local resources, and learn life skills from mentors. Finally, the United States should look to programs such as the Tama Juvenile Training School for an example of a disposition that is not probation but positively impacts juveniles. These positive effects are at least partially due to the work of expert juvenile probation officers who are trained to make these determinations, and whose role in Japan affords them more discretion than their counterparts in the United States.

While the United States may benefit from revisiting the *parens patriae* idea, Japan would do well to part with some of the vestiges of paternalism and informality still present in its system. As Japan faces its own difficulties with juvenile crime, it should look to states like Connecticut that have developed specialized probation divisions.<sup>61</sup> Adopting Connecticut's specialized divisions would allow Japan to cut against the norm of having a large network of generalist-volunteer probation officers and a small cadre of professional officers. In fact, specialization would fit easily into the three-year training that juvenile officers in Japan already receive.<sup>62</sup> Further, Japan should look to the United States for areas where so-called "constitutionalization" of the juvenile court has proved gainful.<sup>63</sup> For instance, Japan currently does not allow the prosecutor to be present at juvenile court and the youth is often not represented.<sup>64</sup> While the judge often relies "on the expert advice of probation officers" for dispositions, this level of informality opens the door to arbitrary dispositions, a lack of uniformity, and juveniles feeling jaded by a system if the level of punishment does not match the level of formality.<sup>65</sup> By introducing procedural protections such as notice to a child and his or her parent(s) of their right to counsel, the opportunity for confrontation, and safeguards against self-incrimination, as the United States did in the *In re Gault* decision, Japan can shed the pitfalls of *parens patriae* in their pre-disposition and disposition while maintaining its system's positive rehabilitative aims.

## V. Conclusion

Japan and the United States may be thousands of miles apart, but their histories and juvenile justice systems are more alike than they seem at first glance. The countries' systems have diverged over the years, but it is time that they look to each other for guidance, inspiration, and a reminder of their similarities. Japan can learn from the formalization of juvenile justice in the United States

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<sup>61</sup> See generally Ito, *supra* note 36.

<sup>62</sup> UNAFEI, *supra* note 35, at 149.

<sup>63</sup> Hardung, *supra* note 34, at 154.

<sup>64</sup> Hiroyuki, *supra* note 1, at 9.

<sup>65</sup> Hardung, *supra* note 34, at 162.

and the division of labor amongst juvenile probation officers in states like Connecticut. The United States has much to learn from Japanese probation officers, both professional and volunteer, and would benefit from a renewed focus on rehabilitation, even if that means introducing a dose of the *parens patriae* character of early juvenile justice. These two countries have a common history and a platform for dialogue, and now is the time to use it.