A black and white photograph of a person's hands gripping the vertical bars of a prison cell. The person's face is partially visible behind the bars, looking towards the camera with a serious expression. The lighting is dramatic, with strong highlights and deep shadows.

A Country THAT IS WEAK ON Criminals

By *Masaomi Ise*

It has long been said in Japan to hate the crime, not the person. Japanese law is also modeled on this spirit. So the punishment even for murder is relatively light compared to other nations, and because the objective of the punishment is to cause the assailant to reflect on his actions, even if the crime is regarded as heinous, there are laws in place to provide careful protection of the assailant's civil rights. Currently the highest penalty is death, but there are many groups that oppose the death sentence. On the other hand, victims' rights are practically non-existent. And once a victim's rights have been violated, they never become whole again. Their photo is splashed all over the media, though they never release photos of suspects. Recently a survey has been published that says 90% of respondents believe that victims do not have enough rights, but there is something wrong from the beginning with a system that would barter the rights of criminals with those of victims. Even to Japan which has long been proud of being the safest country in the world, the time has come when crime spreads its snare right next door. Can we really afford in modern-day society to give rights to those who do not obey the rules?

On November 17, 2004, first-grader K disappeared on her way home from school. That night, K's mother received an e-mail on her cell phone, with a picture, reading "I've got your daughter." The moment she saw the picture, K's mother knew what had happened to her daughter, and she fainted. The next day, K's dead body was discovered. There was evidence of sexual assault, and many of the girl's front teeth were broken.

One month later, Kaoru Kobayashi (age 36) was arrested. After killing K, he trifled with her body and sent a gruesome image of his handiwork to the mother. K's backpack was recovered from among a large amount of child porn and children's underwear in his apartment. Kobayashi has stated that he had no prior knowledge of K, and said it could have been any girl.

Kobayashi had committed previous sex offenses. Fifteen years ago, he lured a kindergarten girl who was picking flowers in the park behind a water tower, saying "there's lots of flowers back here," where he committed public indecency. In spite of the fact that he exposed a total of eight little girls to his evil ways in this manner, he was given a suspended sentence.

Two years after that, when a five-year-old girl resisted his embrace, he began strangling her neck. He was caught by a neighborhood citizen who happened to be passing by. This time he was given a three-year sentence of hard labor for attempted murder. It was after serving this time, and being put back out into society again, that he committed this last heinous crime. Examined after his arrest, Kobayashi said, "If I hadn't been caught, I would have done something again. It is a vice, so I have to keep doing it," "I am not thinking about truly apologizing," and "I have no remorse." In terms of the "market value of judges" sentencing in our nation, just killing somebody is not enough to earn the death penalty. So this Kaoru Kobayashi will eventually finish his sentence and return to society, where he will search out his next living sacrifice.

Habitual Criminals of Brutal Crimes

There are not a few habitual criminals of Kobayashi's ilk. In 2005, sisters aged 27 and 19 were murdered. Their killer was a 22-year-old male,

who climbed the wall of their apartment building like Spiderman and invaded their room on the fourth floor. He repeatedly stabbed the older sister, who was alone in the room, in the chest, and then becoming excited by her tortured expression, raped her. He committed much the same acts on the younger sister who came home soon after. He paused to smoke a cigarette on the balcony with the bodies of the dying girls close by, and then killed them both by stabbing them through the heart. He then set the room on fire in order to destroy the evidence. Five years earlier, at age 16, this assailant beat his own mother to death. He was sent to juvenile detention by a civil court judge where he was put through rehabilitative programs such as counseling on the importance of life and job training. He was released on probation after three years. After being released is when he committed this recent act of brutality.

In late April this year, a young woman was raped on a Japan Railway express train which was full of passengers. Nobody helped her. This perpetrator was also a repeat offender. When he was 28, he lured a young woman into his car where he raped her, and after being released, he was again violent towards women. It was after being released from his second sentence that he committed the recent rape. The rehabilitative programs that he was exposed to twice had absolutely no effect. To his visiting wife, he said, "This might be it. The lawyer told me to get ready for 10 years." He doesn't seem to have learned a thing.

60% Return to Jail Within Five Years

Statistics from the White Paper on Crime for 2006 tell us that recidivism (rate of repeat offenders among total persons arrested in a single year) for ordinary crimes is on the rise, close to 40%. The number of persons going back to jail after committing another crime within five years of serving a full sentence is almost 60%.

There are a total of 66,000 persons incarcerated in Japan today, with another 11,000 pending sentencing. Japan employs 16,000 civil servants as corrections officials to take care of these inmates. There are also administrative and medical staff for them.

Inmates are provided with balanced meals, regular exercise, bestowed with opportunities for education and job training, and provided with medical care and even entertainment. They work in a safe and clean workplace making furniture or crafts, only 8 hours a day with no overtime and a consistent five-day-work week. This is a very fortunate workplace, so different from those in the real world where people have to work on weekends, or long hours of overtime, and have to worry about being transferred or eliminated.

The national budget for maintenance and management of the prison system, including labor costs, comes to 280,000 yen (\$2,333) per inmate per month. After spending this amount of money to reeducate inmates in prisons that are like a paradise, still almost 60% of criminals are not reformed, go on to commit other crimes, creating new victims, and end up back in prison. Something is fundamentally wrong with this system.

What makes prison into a paradise is the concept of "prison education" which holds that the objective of imprisonment is to maintain a healthy mind and body for the prisoner and have him learn job-related knowledge and skills to support his return to society. Assuming that prisons are "educational institutions" in line with this concept of "prison education," let's imagine that we are sending students who failed to pass university entrance exams back to a prep school for re-education. Yet we have 60% fail the exam again after investing 280,000 yen a month to teach them for a year, sending them back to the prep

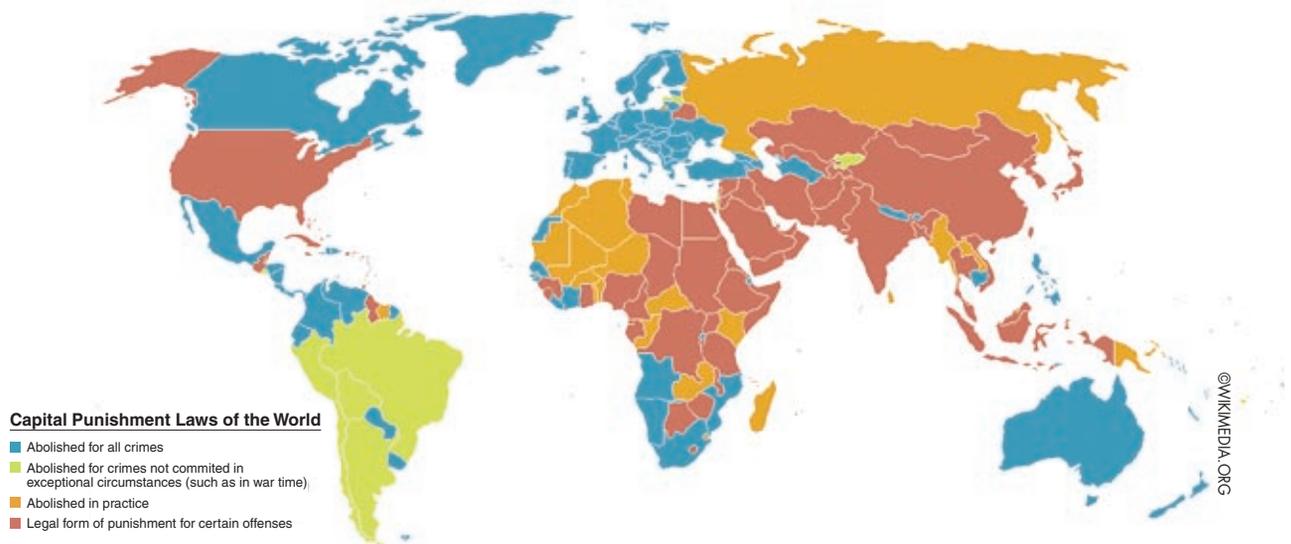
school. If this was a commercially-run prep school, it would certainly go out of business in no time.

The very way of thinking that holds that any criminal can be reformed into an upstanding person if given the right environment, is a very bold assumption. If we think again of a prep school, it would be like the overly optimistic idea that any student if taught well enough would be able to pass the entrance exam of a top-ranked school. Considering the almost 60% fail rate, we can well understand how fundamentally deficient that concept is.

America Is Switching from Education to Isolation

The concept of prison education was forced on Japan by America after the war, but America today has already found out that this way of thinking cannot assure the safety of its citizens, and is continuing to switch to a doctrine of more severe punishment. In the early 70s, more than 70% of persons found guilty in federal courts were recidivists. Inmates who had benefited from extremely costly reform programs in prison were committing crimes again as soon as they were out on parole, bringing taxpayers to their feet complaining about the preposterous waste of their taxes.

Believing that a mind that has been steeped in criminality can be reformed is a human sentiment. The only one who can do that is almighty God. The view is spreading that in order to protect



society from criminals, they must be thoroughly segregated from the world. The extreme of segregation is of course to be separated from this world entirely, in other words, death. The number of death sentences handed down in America declined throughout the 60s, to zero in 1968. But in 1977, Utah reinstated the death penalty. Since that turning point 38 states have reintroduced the death penalty as of 1999, and in that year about 100 people were executed.

The Pendulum Swings in America

The anti-death penalty movement is very strongly rooted in America as well, but recent public opinion shows that 47% favor the death penalty for first-degree murder, while 48% favor not death but "life without parole." Combined, fully 96% think that vicious criminals should be isolated from society forever. In 1994 California instituted the so-called Three Strikes law under which conviction of three violent crimes would result in automatic life imprisonment. The federal government and more than 20 state governments have gone on to adopt this system.

At the root of this movement is the idea that it is the job of the government to protect the safety of its citizens and children, and that criminals who disrupt their safety should be thoroughly isolated from society. America has swung dramatically from the idea of prisons as education to prisons as isolation. It happened that America was at the far end of the pendulum during the years that it occupied Japan, and so the idea of prison as education was imbued in the postwar legal system.

Victims' Rights Are Ignored

There is another problem with the idea of prison as reform. There is absolutely no consideration of the rights of the victim. In 1998, a 22-year-old woman had gasoline poured over her and was then set on fire. The man who did it was in love with the victim's friend. He had found out that the girl he was in love with was seeing someone else, and came to blame the victim, saying it was her fault for taking the girl out partying. So he doused her with gasoline and used a lighter to set her on

fire. Though she was rescued by ambulance, she suffered third-degree burns over 90% of her body. She barely survived, with the help of skin grafts from family members.

In court, the victim showed her burn scars in a tank top shirt, and asked for the most severe punishment for the perpetrator, telling the judge she wanted him to see with his own eyes what the perpetrator had done to her. And yet, he was sentenced to just 6 years. It seems that the assailant has finished his sentence, is back out on the streets and has actually married, having changed his name. On the other hand, the victim after 10 surgeries finds herself unable to pay the four million yen in medical bills she incurred as a result of the crime. Her attacker has not had to pay one cent. The victim has lost most of her sweat pores because of the burn scar tissue covering her body, and is thus unable to regulate her own body temperature, so she can't stand even the slightest heat. Her life has been ruined by the enormous debt she is saddled with, as well as the physical aftereffects of her condition.

Prewar *Futai Shiso* System (Civil Suit of Defendant) Helped Victims

If the above victim wanted to try and get damages paid from her assailant, she would have to bring suit against him in civil court. The government only finds the guilt or innocence of a crime and determines the sentencing, and does not help the victim with any civil judgment. The victim has to hire her own attorney and file suit on her own. But if there is no address shown on the filing documents, the suit will be rejected by the court. The victim in this case was afraid to let her address be known for fear that her assailant would come after her again, so she gave up on suing for damages. Even if she had been brave enough to file a suit, under the law her position is equivalent to that of the defendant, and she bears the burden of proof. This all takes time and money. The defendant can easily buy time by having the case postponed, and it can soon be up to two years past. Most victims feel unable to take on such a burden and give up on seeking damages.

In this sense our nation in the prewar years had a much more robust system. There was a system called *Futai Shiso* which means ancillary lawsuit,



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which would conduct a civil trial for damages to the victim simultaneously with the criminal trial. Under the Futai Shiso system, the civil suit was attached to the criminal trial, so no extra fees were incurred. No attorney fees were needed. Also, the evidence gathered by police and investigators for the criminal trial could be used in the civil suit as well, so there was no need, as there is now, for the victim to mount her own evidence. If there was insufficient evidence, the judge would investigate under his own authority. The verdict on the civil suit damages would be handed down simultaneously with the criminal verdict, so the defendant would be unable to postpone the case.

If this Futai Shiso system were in place today, the above victim would have been able to receive considerable damages from her assailant simultaneously with the guilty verdict. The prewar system seems to have been much more considerate of the rights of the victim. This February the Legislative Council released its findings that the Futai Shiso system should be reintroduced. But there is a movement to oppose its reintroduction, headed mainly by attorneys and constitutional scholars. They claim that Futai Shiso is in opposition to one of the major principles of modern law, that is the separation of criminal and civil affairs. But trampling victims' rights underfoot to this extent is certainly not meant to be a major principle of modern law.

Towards a Penal System Rooted in the People's Sense of Reason

In Europe there are systems for public reparation of victims of crimes. In England, for example, a maximum of 500,000 pounds can be paid out in reparation to a victim from the government. It

makes sense that because it is the responsibility of the government to guarantee the safety of its citizens from crime, if it does not carry out this responsibility, it should be liable to the citizen that was damaged by the crime.

However, it also makes sense to make the criminals themselves pay compensation at the same time. In America there are commercially operated prisons where up to 80% of wages earned by inmates working in prison factories are deducted and part of that applied to settlements paid to their victims. If these two systems were combined, the government could pay reparation to the victim, and use the wages earned by the inmate in prison to compensate itself for those reparation payments. For example, if the inmate worked for a minimum wage of 700 yen (\$5.8) an hour, it would be able 110,000 yen (\$916) a month on a 40-hour-work week. 80% of that, or 90,000 yen (\$750) could be paid to the government.

If reparation to the above victim who suffered burns over 90% of her body were set at 50 million yen, the assailant would have to work for 55 years in prison. Of course, his sentence of six years could be served concurrently with that. Or, after serving his sentence and coming back out on the streets, he could have to pay 200,000 yen (\$1,666) of a monthly salary of 400,000 yen (\$3,333), for example, to reparations. That would only take 21 years. That seems only fair for the burn victim who has to spend the rest of her life in pain.

The idea that crime has to be cleared by reparation probably makes sense to the typical Japanese person. This type of crime reparation system probably appeals more to the sense of reason of Japanese people more so than the American ideas of prison as education or as isolation. Moving beyond the prison as education system forced upon us by postwar America, one that has been recognized even by them as wrong, and reform our penal system to one that is rooted in the sense of reason of our people, may be just another link in the "departure from the postwar regime" political program. ■

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