TOWARD A WELL BALANCED CHILD PROTECTION SYSTEM:
A FRANCO-ENGLISH COMPARISON IN SEARCH OF THE DEVELOPMENT OF THE
JAPANESE SYSTEM

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1 Child protection is difficult because a balance has to be struck between parental authority and family autonomy on the one hand and the necessity of securing children’s safety, on the other. How should this balance be achieved? The first purpose of my presentation is to explore the contrasting features, advantages and disadvantages of English and French child protection systems. I shall then analyze the current situation and the possible direction of development of the Japanese system compared with the contrasted models. Japanese legal system is a mixed system - common law and continental law- and also has kept its uniqueness based upon its own tradition to some degree, with a potential of developing a well balanced system.

2 The English and French systems have distinct characteristics outlined further on, whose details will be explored in the presentation. Some comments will also be made about an alternative model in Scotland and Belgium.

   The English system is child-centred and its justice can be characterized as coercive. The welfare of a child is paramount and the results of assessments of the future welfare of a child count a lot in deciding the measures to be taken. Legal links between children and parents are more readily severed by adoption. Parental rights appear as procedural rights. The courts’ involvement, characterized by its adversarial procedures, is limited to rather serious cases, in which the courts’ power tends to be used as coercion. The system can be described as interventionist in that children are removed from the home and the legal link with their parents is severed more quickly and more often by the coercive power of courts.

   The French system is family-centred and its justice can be characterized as supportive. When future measures are questioned, the historical familial context, including the environment in which the parents themselves grew up, is investigated. Supporting parents in their parenting is much preferred and severance of the legal parent-child links is rare. Parental rights emerge as rights to keep their children with them. The courts, where specialist judges work, tend to be involved at an earlier stage in a wide range of cases. The court hearing is very informal and the judges have wide discretionary power. The system may also be described as interventionist, but in the sense that the state can be involved in the daily rearing of children on a continuous basis through the juvenile judges.

3 As for Japan, I will focus on the procedural aspect. There is a special family court independent from a general court in Japan. Full-time family judges sit in the family courts and are supported by court-attached psycho-medical experts. Family proceedings held in the family courts are informal and paternalistic and include in-court mediations.
However, when it comes to child protection, the story is different. Up until now, the family courts’ jurisdiction in terms of child protection has been limited to two categories: firstly, approval of the measures which the social services agencies seek to take -often removal of children from their own homes-, when the parents of the children in question don’t give consent with it and secondly, retreats of parental authority (parental responsibilities) from parents. Therefore, the list of jurisdictions regarding child protection under the current Japanese system fits to the model of coercive justice.

Against this current situation, there has been a proposal that the courts should play more proactive role and commit to cases not on the spot but on a more continuous basis, in order both to promote adherence by the parents and to provide counseling and training services for the parents more effectively. The answer to this proposal would depend on which function is to be expected to family justice: coercive power used in most serious cases, or supportive justice in order to promote family function in general? The English model inspires the former direction and the French does the latter.

The Japanese system has a potential of developing in both directions. Family justice other than child protection is informal described above. This general character of the system will possibly be enlarged to cover child protection for the purpose of supporting families. However, there has been a reform of family related justice recently, which could result a departure from the traditional informal justice towards a coercive justice model.

The important point would be that the two functions -coercion and support- shouldn’t be mingled but should be carried out separately. Regarding the Japanese system, a desirable reform would be to keep the current proceedings of the limited jurisdictions as a way to take necessary measures coercively in serious cases and to start another proceeding in which measures of supporting families are taken and which is distinguished from the current coercive procedures. The new proceeding does not necessarily have to be operated in the courts but might be carried out as an alternative proceeding outside courts, as is seen in the systems in Belgium and Scotland.

* This draft is still in the process of drawing and may be subject to some changes.