

TITLE: On Implementing a Therapeutic Jurisprudence-based Criminal Justice System in Japan

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## 1. Introduction

Japan's crime rate is the lowest among all developed countries. For instance, the homicide rate in Japan stands at 0.3 per 100,000 inhabitants in 2011<sup>1</sup>. This is less than even one-third of that of Australia's and Canada's homicide rates. Japan's homicide rate is less than one-fifteenth of the United States. The number of reported crimes in Japan peaked in the year 2002 (3.69 million crimes were reported), and since then this number has decreased steadily. For instance, only 1.48 million crimes were reported in Japan in 2016, and this number is the lowest in Japan since the Second World War<sup>2</sup>.

However, Japan has struggled to reduce the number of repeat offenders

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<sup>1</sup> Global Homicide Book, Table 8.1

[http://www.unodc.org/documents/gsh/pdfs/2014\\_GLOBAL\\_HOMICIDE\\_BOOK\\_web.pdf](http://www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf) Accessed 20 February 2018.

<sup>2</sup> "Japan's crime rate hits record low as number of thefts plummets", Japan Times, 18 Jan., 2017

<https://www.japantimes.co.jp/news/2018/01/18/national/crime-legal/japan-crime-rate-hits-record-low-number-thefts-plummets/#.WozN-YIiGi4> Accessed 20 February 2018. For the latest English statistics, see "Crime in Japan in 2010" by the National Police Agency. [http://www.npa.go.jp/english/seisaku/Crime\\_in\\_Japan\\_in\\_2010.pdf](http://www.npa.go.jp/english/seisaku/Crime_in_Japan_in_2010.pdf) Accessed 20 February 2018.

during these years. Recidivism, therefore, is considered to be a significant problem in the country. Currently, the recidivism rate is around sixty percent for first-time male prisoners and fifty percent for first-time female prisoners in Japan. Although the public sector continues to promote rehabilitation and correctional programs, the recidivism rate in Japan remains high<sup>3</sup>.

The recidivism rate has increased even though the number of first time offenders has decreased<sup>4</sup>. Therefore, it could be argued that rehabilitation policies, currently in place in Japan, have not been effective. Conversely, it must also be stated that the traditional practice of punishing and imprisoning offenders needs to be revised, if not overhauled.

The first section of this paper throws light on the traditional rehabilitation schemes that characterize the Japanese criminal justice system. The next section deals with the various efforts that the public and private sectors have taken to reduce recidivism in Japan. Notably, Professor David Wexler, who is the originator of the therapeutic jurisprudence (TJ) model, remarked that these efforts were like putting “new wine in an old bottle”<sup>5</sup>. The third section focuses on the recent demands made by the governmental and private sectors for promoting measures aimed at for preventing recidivism in Japan. The fourth section deals with the recent emergence of TJ as field of study within the Japanese academia. This paper also focuses on the salience of TJ; in particular, it focuses on the ways in which TJ can be used to shape public policy, especially criminal policy, in Japan.

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<sup>3</sup> [http://www.moj.go.jp/ENGLISH/m\\_hisho06\\_00025.html](http://www.moj.go.jp/ENGLISH/m_hisho06_00025.html) Accessed 20 February 2018.

<sup>4</sup> [http://hakusyol.moj.go.jp/en/65/nfm/n\\_65\\_2\\_5\\_1\\_1\\_1.html](http://hakusyol.moj.go.jp/en/65/nfm/n_65_2_5_1_1_1.html) Accessed 30 January 2018.

<sup>5</sup> In 2015, at the conference in Wien, he used this phrase as his appraisal of the condition in Japan after his attending to the session by the Japanese team.

## 2. The Therapeutic Approach in Japan

The importance of the therapeutic approach has been recognized only recently in Japan, and this awareness, moreover, is limited to academia. It is important to examine the workings of the rehabilitation measures traditionally practiced in Japan in order to suggest better rehabilitation schemes in the future.

### 2.1 The Volunteer Probation Officer System

Japan has two types of probation officers: professional probation officers and volunteer probation officers. The latter are also called “Hogo Shi”.<sup>6</sup> The probation system was established more than eighty years ago. The role of the volunteer probation officer is quite unique. These officers are not professionals, but citizens of high social standing. A volunteer probation officer is nominated on a biannual basis by the selection committee in each community. Currently, there are over 48,000 volunteer probation officers in Japan. They are typically involved in rehabilitation measures. They also help to create awareness about rehabilitation through public relation services<sup>7</sup>.

Volunteer probation officers meet with former juvenile offenders and released adult former prisoners (their clients) twice every month. Typically, these meetings are arranged at the officers’ residences. The officers are concerned with clients’ lives, health, family, and employment and they counsel their clients during these meetings. In short, they aim

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<sup>6</sup> [http://hakusyo1.moj.go.jp/en/65/nfm/n\\_65\\_2\\_2\\_5\\_3\\_1.html](http://hakusyo1.moj.go.jp/en/65/nfm/n_65_2_2_5_3_1.html) Accessed 30 January 2018.

<sup>7</sup> “Recognized globally for helping rebuild lives, Japan’s volunteer probation officers face challenges of social change” (Oct. 10, 2017), <https://www.japantimes.co.jp/news/2017/10/10/national/crime-legal/recognized-globally-helping-rebuild-lives-japans-volunteer-probation-officers-face-challenges-social-change/#.W1Nvd9winNE> Accessed 10 January 2018.

to facilitate the rehabilitation and integration of their clients back into society.

The volunteer probation officer system was first implemented in Japan. This system has been gaining popularity in the Philippines since 1977. The country now has over 13,000 volunteers. Thailand also established a similar system in 1985, and it now has over 23,000 officers. The volunteer probation officer performs a very important social function: he or she aims to reduce the risk of recidivism and also seeks to rehabilitate and reintegrate former inmates into society. This system is essentially based on the therapeutic approach to criminals.

However, this system is not without disadvantages. For instance, volunteer probation officers are not professionals. Although some officers opt to participate in rehabilitation-related training programs, they still lack professional experience. They also typically do not possess the authority to collaborate with medical, psychological, or social service experts.

Therefore, it has become necessary to seek the help of professionals and experts to rehabilitate ex-offenders and to prevent recidivism. In this context, TJ is considered as a new, yet salient, approach to reduce recidivism and to enhance the probation officer system.

## 2.2 Juvenile Court Process

The juvenile procedure is that part of Japan's criminal justice system which best embodies the spirit of TJ. It focuses on the rehabilitation of juvenile offenders, prepares them to meet the tribunal, and also enrolls them in reform school<sup>8</sup>. In fact, the main purpose of the Japanese Juvenile Act pertains to the protection of juveniles, creating a supportive environment for them, and facilitating their rehabilitation. Article 1 of this Act states the following:

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<sup>8</sup> [http://hakusyo1.moj.go.jp/en/65/nfm/n\\_65\\_2\\_3\\_2\\_1\\_2.html](http://hakusyo1.moj.go.jp/en/65/nfm/n_65_2_3_2_1_2.html) Reform school in Japan is called as "Juvenile Training Schools" which provide correctional education appropriately fitting with the needs of each juvenile individual. Accessed 10 January 2018.

The purpose of this Act is to subject delinquent Juveniles to protective measures to correct their personality traits and modify their environment, and to implement special measures for juvenile criminal cases, for the purpose of Juveniles' sound development.

The juvenile court employs professionals to observe juvenile delinquents and investigates the situations under which they are alleged to have committed a crime. These professionals are called "family court probation officers." In each case, this officer typically advises the judge about the rehabilitation measures that may be the most appropriate for the juvenile delinquent. Family court probation officers are typically experts in the fields of psychology, sociology, and law; they are also trained as probation experts<sup>9</sup>.

Officers do not focus on punishment; they focus on rehabilitating the juvenile offenders. They work, by using sociological and psychological knowledge, for their searching and reviewing a juvenile's family history and environment, health condition, mental development, and social life. Juvenile court judge seeks to identify the best way to facilitate the rehabilitation of a juvenile delinquent; he or she also seeks to create a suitable social environment for the juvenile delinquent.

### 3. New Wine in an Old Bottle

At present, there are no actual problem-solving courts in Japan. However, several actors of the Japanese criminal justice system focus on the rehabilitation of ex-offenders and correction service. For instance, defense attorneys in Japan focus on rehabilitation of their clients during the pre-trial stage; they also advocate rehabilitation during sentencing. In addition, social service workers also collaborate with defense attorney

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<sup>9</sup> [http://hakusyol.moj.go.jp/en/65/nfm/n\\_65\\_2\\_3\\_2\\_1\\_3.html](http://hakusyol.moj.go.jp/en/65/nfm/n_65_2_3_2_1_3.html) Accessed 10 January 2018.

in order to prepare the environment of the criminals. Further, social service workers and the Public Prosecutor's Office are currently developing what is called "Entrance Support" during the indictment process. There is also a new development in the sentencing process which permits judges to choose partial suspension of sentencing to promote the rehabilitation of the defendant, a so called "partially suspended sentence".

Professor Wexler uses the expression "like new wine in an old bottle" to describe the essence of these efforts after Japanese researchers had reported these developments at the Wien Conference in 2015. Although there is no official therapeutic court or problem-solving court in Japan, the efforts introduced in this section are very close to TJ.

### 3.1 The Therapeutic Approach to Criminal Defense

Japanese criminal procedure uses an adversarial process, and the Japanese Constitutional Law guarantees a defendants' right to counsel. There are three types of public defenders as well as court-appointed defenders: (i) the duty defender, who has the first meeting with a defendant at during the early stages of an investigation; (ii) the pre-trial public defender; (iii) the court-appointed defender, usually assigned for the defense during trial. There are also private defenders employed by the defendants themselves or their family.

Ordinarily, a defense attorney's duty involves the following: (i) legal counseling, (ii) acquiring an acquittal, and (iii) mitigation of a given sentencing decision. Defense attorneys generally do not consider themselves bound by the obligation to uphold the therapeutic approach to criminals.

However, the counsel's duty can be considered in the view of the therapeutic approach to criminals. As per this approach, the defense counsel is also expected to perform the following: arrange medical treatment for addiction and introduce activities with the therapeutic community as well as others who advocate the rehabilitation of offenders.

They are also expected to prepare a suitable environment with cooperation of social welfare workers.

Defense counsels who are advocates of the therapeutic approach to criminals typically seek the dismissal of the prosecution and attempt to present mitigating factors in order to acquire a lenient sentence. They also argue for a suspended sentence when they believe that a defendant possesses the appropriate social resources for rehabilitation. They also attempt to influence the judge who understands various support such as social welfare service, medical treatment for addiction, counseling, and meeting in the therapeutic community to the defendants as opposed to imprisonment. They typically do so by arguing that the former is a more cost-effective and supportive approach than the latter in terms of promoting rehabilitation.

The following is a good example of a TJ-based approach to criminals by defense attorneys. The TS Tokyo is a group of active defense attorneys who collaborate with workers from the social welfare service system in order to facilitate the rehabilitation of their intellectually challenged clients. They successfully avoided indictment in many cases by presenting compelling evidence for the need to rehabilitate the defendants.

These measures are helpful especially for defendants diagnosed with “kleptomania”, which is defined as “persistent neurotic impulse to steal especially without economic motive”<sup>10</sup>. Advocates of therapeutic jurisprudence seek to ensure that defendants diagnosed with kleptomania receive treatment from experts, and not merely imprisonment or punishment. Daigo Hayashi is an experienced defender of those diagnosed with kleptomania. He actively cooperates with hospitals that provide specialized treatment for kleptomania and other such conditions. In many cases, he has managed to obtain reduced and suspended sentences. He has also had cases dismissed by the prosecutor<sup>11</sup>.

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<sup>10</sup> See, Merriam-Webster.

<sup>11</sup> <https://mainichi.jp/articles/20170825/k00/00e/040/281000c> (in Japanese) Accessed 10 January 2018.

Offenders with addictions, especially drug addiction, and disabilities, also benefit from rehabilitation-oriented defense strategies. In these cases, the offenders must be enrolled in special treatment programs in order to alleviate the symptoms related to their respective conditions. It is also important to facilitate their rehabilitation, and these measures typically involve special communities and facilities that promote a drug-free life. Naomi Sugawara is well-known for her advocacy of rehabilitation, especially for her clients of drug offences. She actively cooperates with specific therapeutic communities, hospitals, and social service providers. Notably, she also succeeded in gaining a second suspension of a sentence, which is an extremely rare occurrence<sup>12</sup>.

### 3.2 The Public Prosecutor's Office and Social Services

The Public Prosecutor's Office recently set up a special unit in order to identify appropriate social service measures and organizations for homeless defendants experiencing problems in their social lives. For instance, the Tokyo District Prosecutor's Office employs a part-time social worker who offers professional opinions to the prosecutor in charge of deciding an indictment. In some instances, based on the social worker's suggestions, prosecutors have dropped their cases in favor of rehabilitation.

At present, this process is not regulated by any specific law or statute. The decision to approach a social worker is based solely on the discretion of prosecutors, especially during the pre-indictment stage. A specific clause in the Criminal Procedure Law permits prosecutors to consider the age, character, and circumstances of the defendant before indictment, following which prosecutors may or may not approach social workers. It must be noted that Japanese prosecutors have dropped a significant number of cases as a result. However, the Prosecutor's Office can indict or drop a case on its own discretion and without the support of a professional social

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<sup>12</sup> <https://mainichi.jp/articles/20170211/k00/00m/040/170000c> (in Japanese) Accessed 10 January 2018.



worker or any knowledge related to social resources, which could assist the rehabilitation of the defendant<sup>13</sup>.

On the other hand, in 2014, the Ministry of Justice established support mechanisms for the intellectually disabled and elderly inmates recently released from prison. In particular, they are beneficiaries of social service, which can be supported at regional centers in each prefecture. The center is officially called the “Regional Sustained Community Life Support Centers for the Elderly and Handicapped Ex-offenders”<sup>14</sup>. The Center seeks to assist ex-offenders, especially the intellectually challenged and the elderly, in terms of social rehabilitation and local settlement. For example, the Center assists ex-inmates to acquire livelihood support from local governments and to find a residence after release, and it also offers employment-related assistance.

The centers were especially established for the following reasons. In 2006, a research report by the Ministry of Justice and the Ministry of Health, Labor and Welfare revealed that prisons in Japan were populated by a significant number of intellectually challenged prisoners (low IQ under 69). In fact, an estimated 2.4 percentage of all inmates was deemed to be included in this category. More importantly, the report revealed that nearly half of the inmates belonging to this category had not received social support. It was as a result of this report that the Japanese Government initiated this scheme. Based on this scheme, handicapped people and the elderly are not sent to prison as they are ill-suited for life in prison. They are instead enrolled in rehabilitation programs and are assisted by social work service centers established by the local

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<sup>13</sup> Ryoko Kobayashi, “Keiji-jiken niokeru shakai-fukki nitsuite (Toward the rehabilitation of offender in the criminal cases)”, [http://www.waseda.jp/prj-wipss/ShakaiAnzenSeisakuKenkyujoKiyo\\_09\\_Kobayashi.pdf](http://www.waseda.jp/prj-wipss/ShakaiAnzenSeisakuKenkyujoKiyo_09_Kobayashi.pdf) (in Japanese) Accessed 10 January 2018.

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[http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/hukushi\\_kaigo/seikatsuhogo/kyouseishisetsu/index.html](http://www.mhlw.go.jp/stf/seisakunitsuite/bunya/hukushi_kaigo/seikatsuhogo/kyouseishisetsu/index.html) (in Japanese) Accessed 10 January 2018.

governments.

The recent increase in the number of elderly offenders<sup>15</sup> and the number of elderly people in prison also played a key role in the establishment of this scheme.<sup>16</sup> Statistics show that the number of elderly offenders (aged of sixty-five or older), especially in cases involving theft and violence, is higher than the number of juvenile offenders. The problem of aging, therefore, affects not only the general population of Japan but also Japanese prisons.

### 3.3 Partially Suspended Sentences

Japanese law is characterized by two forms of sentencing: (i) imprisonment; (ii) the suspension of a sentence with or without probation; and (iii) imposing a fine. However, in order to prevent recidivism among first-time offenders, another form of sentencing was introduced in 2016: the partially suspended sentence<sup>17</sup>. The partially suspended sentence was introduced in order to facilitate the rehabilitation of repeat offenders. It is to be noted that only the sentence delivered against first-time offenders could be suspended. Courts never suspend the sentences delivered against repeat offenders. The partially suspended sentence was introduced

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<sup>15</sup> “Japan’s elderly account for 20% of all crime - and it’s turning prisons into nursing homes” (Jan. 17, 2017), <http://www.businessinsider.com/japan-senior-crime-rate-turning-prisons-into-nursing-homes-2017-1> Accessed 10 January 2018 ; “Media starts to focus on Japan’s aging prison population” (Jan. 28, 2017), <https://www.japantimes.co.jp/news/2017/01/28/national/media-national/media-starts-focus-japans-aging-prison-population/#.W1N3DdwinNE> Accessed 10 January 2018.

<sup>16</sup> [http://hakusyol.moj.go.jp/en/65/nfm/n\\_65\\_2\\_4\\_7\\_1\\_1.html](http://hakusyol.moj.go.jp/en/65/nfm/n_65_2_4_7_1_1.html) Accessed 30 January 2018; “Japanese prisons are starting to look like nursing homes” (Dec. 4, 2015), <http://www.businessinsider.com/japanese-prisons-look-like-nursing-homes-2015-12> Accessed 30 January 2018.

<sup>17</sup> [http://hakusyol.moj.go.jp/en/65/nfm/n\\_65\\_2\\_2\\_1\\_2\\_5.html](http://hakusyol.moj.go.jp/en/65/nfm/n_65_2_2_1_2_5.html) Accessed 30 January 2018.

to address this situation<sup>18</sup>.

Moreover, partial suspension is granted to repeat offenders only if they have not been imprisoned in the last five years and if the statutory maximum sentence for the offense is less than five years. Interestingly, defendants involved in drug cases qualify for a partially suspended sentence even if they have been imprisoned in the last five years. The suspension is subject to the court's discretion. The court typically takes into consideration the circumstances surrounding the crime or violation. In addition, the suspension also depends on specific conditions. If a defendant violates the terms and conditions while serving a partially suspended sentence, he or she will be taken into custody and will serve the remaining portion of the sentence in prison.

As of December 2016, Japanese courts delivered partial suspensions in 1, 596 cases, and it has reached nearly three percent of the whole number of sentence in Japan. Most cases involving partial suspension were for drug-related offences.

#### 4. Recent Government's Policy

Recently, the Japanese Government and Parliament prioritized the prevention of recidivism. In December 2016, Parliament enacted the Recidivism Prevention Promotion Act<sup>19</sup>. In addition, the Ministry of Justice also established a task force in order to comply drafts of the policies related to recidivism. As a result, the Ministry released its

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<sup>18</sup> “Three courts mete out new partially suspended sentences in stimulant drug cases” (Jun 3, 2016), <https://www.japantimes.co.jp/news/2016/06/03/national/crime-legal/three-courts-trying-drug-cases-first-mete-new-partially-suspended-sentences/#.Wk7mi9winNE> Accessed 10 January 2018.

<sup>19</sup> “Recidivism among the elderly” (Dec. 17, 2016), <https://www.japantimes.co.jp/opinion/2016/12/17/editorials/recidivism-among-elderly/#.W1N2FNwinNE> Accessed 10 January 2018.

“Comprehensive Plan for Preventing Recidivism” in December 2017<sup>20</sup>.

This comprehensive plan includes over 130 plans, which pertain to multiple governmental services tasked with addressing the recidivism rate. This is a remarkable agenda and a guide for implementing recidivism-related policies. The plan involves the following governmental sectors: The Ministry of Health, Labor and Welfare, the National Police Agency, the Public Prosecutors Office, the Rehabilitation Office and the Correction Office in the Ministry of Justice. An important feature of this plan is that it pertains not only to the public sector but also to the private sector: several civilian groups and volunteers campaign for the social inclusion of ex-offenders. Similarly, many employers also hire ex-prisoners and ex-offenders, and this is part of what is called the “cooperative employer” system.

It is evident that cooperation between civilians, the public sector, and the private sector is essential in order to reduce recidivism. Cooperation creates social resources, which, in turn, facilitate the rehabilitation of ex-prisoners and ex-offenders. Therefore, it is also important to examine the ways in which the public sector cooperates with the private sector, especially in the context of the criminal justice system, prison education programs, and the reintegration of ex-prisoners and ex-offenders into society.

## 5. Recent Movement in Japanese Academia and Social Change

### 5.1 Research Team of TJ

In 2014, a research group was established in Japan to study TJ. This was the first research group dedicated exclusively to study of TJ in the country, and it was supported by the National Research Fund. The group’s prime

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<sup>20</sup> “Help elderly former inmates” (Nov. 25, 2017), <https://www.japantimes.co.jp/opinion/2017/11/25/editorials/help-elderly-former-inmates/#.WIN2KNwinNE> Accessed 10 January 2018.

objective was to introduce the concept of TJ among the Japanese general public. It also aimed to educate people and the various professions related to the rehabilitation of ex-prisoners. This includes the following roles: probation officers, prison officers, prison program officers, judges, lawyers and academics in the field of law and criminology. The team also developed training programs for defense lawyers. These programs focused on the following: (i) TJ-based defense methodology for the pre-trial stage and (ii) the utilization of various social resources in order to facilitate the rehabilitation of a defendant during the trial stage.

This group consists of over thirty members including legal scholars, criminologists, sociologists, psychologists, judges, lawyers, juvenile court probation officers and addiction advocates.

## 5.2 The Establishment of the Research Center

The first academic research center for TJ in Japan was established in Seijo University<sup>21</sup> in April 2017. Called the Seijo University Research Center of Therapeutic Jurisprudence, it organized a symposium at Seijo University in June 2017. The former vice-Minister of the Minister of Health, Labor and Welfare, Ms. Atsuko Muraki, was invited as the keynote speaker, and a former Supreme Court judge, Tomoyuki Yokota, was invited as an opening speaker. Over 100 people attended the symposium. The participants included mental health doctors, scholars, lawyers, probation officers, prison officers and bureaucrats, including the head of the Correction Office. This ceremony was broadcast on a national level during the seven-o' clock evening news program. The concept of TJ had gained popularity - seemingly overnight - in Japan, and the media also covered a lot of news stories about recidivism and discussed the problem from the perspective of TJ.

The Research Center is currently involved in the following projects: 1) Educational Project, 2) Training Project, 3) Research Project, 4) Publication Project, 5) Policy Development Project, 6) Translation Project, 7) International Collaboration Project, and 8) ATA-Net Project.

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<sup>21</sup> <http://www.seijo.ac.jp/research/rctj/> Accessed 10 January 2018.

As part of the educational project, the Center aims to sensitize and educate reporters about recidivism and rehabilitation. To this end, the Center organizes short lectures for the reporters group, and these lectures are delivered by visiting scholars and specialists in the field of rehabilitation programs, addiction issues, drug court and drug crime policy, and medical treatment. As part of the policy development project, the Center lobbies in favor of TJ-based criminal policy and rehabilitation measures. This project involves awareness programs about TJ and rehabilitation measures; the programs are especially designed for **Members** of Parliament. The publication project involves the publishing of a guidebook for criminal defense lawyers. The guidebook seeks to explain the techniques, the strategy and the mechanisms involved in the TJ-based approach in **criminal defense**; the book is expected to be published this year. Several members of the research group have contributed chapters to this book. The Center's translation project involves the translation of selected English articles into Japanese. **There** are very few research articles about TJ in Japanese, and the translation project aims to address this gap. As part of the research project, the Center is currently involved in identifying and gathering social resources. It does so by drawing from the practical knowledge of defense lawyers and advocates of TJ. The research project aims to develop sound TJ-based criminal policy in the future. ATA-Net is the Center's latest research and development project<sup>22</sup>. ATA-Net is **an** acronym **for** Addiction Trans-Advocacy Network and it is a project funded by the Research Institute of Science and Technology for Society (RISTEX) under the Japan Science and Technology Agency (JST) since 2016. This project aims to create **a** network of various addiction advocators such as **the** therapeutic community, medical experts, social work experts and lawyers in **the** community. It aims to establish local platforms for the network at the community level in order to assist ex-prisoners and ex-offenders in community when finding **suitable** support from these advocators.

The Center is funded by RISTEX and one of its prime aims is to support

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<sup>22</sup> <https://ata-net.jp/> (in Japanese) Accessed 30 January 2018.

ATA-Net activities.

### 5.3 Focusing on Addictions

There are a large number of rehabilitation centers for drug addiction in Japan. The Drug Addiction Rehabilitation Center (DARC) in Japan, a famous self-care community, was found in 1980's. Currently, there are over 50 DARC<sup>s</sup> in Japan.

The DARC focuses not only drug addiction but other kinds of addiction too, such as gambling, gaming, and internet addictions. In particular, the Ministry of Health, Labor and Welfare has worked continually over the last few years in order to prevent these additions. Private centers and organizations, such as DARC and other rehabilitation centers, have now emerged as key organizations to rehabilitate and treat addicts<sup>23</sup>.

These circumstances mean that it is possible to develop TJ-based rehabilitation programs for ex-offenders and inmates as well as addicts. The ATA-Net project aims to connect these different organizations (the public and the private sectors) in order to enable the private sector to develop TJ-based rehabilitation programs.

### 5.4 Wexler Speech

It was the Center's great honor to welcome the founder of the very concept of TJ, Professor David Wexler, to Japan. Professor Wexler visited Japan in September 2017 as the keynote speaker at a criminology-related academic conference held in Tokyo. Over 400 people from different sections of society attended this conference. In his one-hour-long speech, he spoke about the ways in which TJ could be incorporated into the Japanese criminal justice system.

Yuko Nishitani, an attorney from the Osaka Bar Association, wrote a blog

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<sup>23</sup> "Japan starting to view drug abuse as disease needing long-term care" (Jul. 10, 2016), <https://www.japantimes.co.jp/news/2016/07/10/national/social-issues/japan-starting-to-view-drug-abuse-as-disease-needing-long-term-care/#.WlN3pdwinNE> Accessed 10 January 2018.

post assessing the event<sup>24</sup>. She seemed to have found Professor Wexler's speech impressive, especially his statement that an attorney should look not only at a defendant's negative aspects but also at his or her positive aspects. Typically, in a criminal trial in Japan, judges disapprove of a defendant's overall personality based solely on his or her criminal record. Given this context, Nishitani found the Professor's statement rather commendable.

An editor of a legal publication sent me an e-mail describing his approval of Wexler's speech. The editor found the speech and the discussions that followed very fascinating. In particular, the editor found Wexler's perspectives about TJ and rehabilitation rather ground-breaking. He even wrote that TJ should be the basis for designing and promoting any rehabilitation policy in Japan.

Some weeks later, the Nihon Keizai Shimbun, a major newspaper in economics and finance, reported about the event. The report stated that the Research Center was established by Seijo University; it also focused on the need to implement measures to prevent recidivism. More importantly, it stated that TJ should be the basis for policies aimed at reducing recidivism<sup>25</sup>. As a result, the concept of TJ was made accessible to a number of ordinary Japanese citizens.

## 6. Summary

Professor Wexler's speech in Tokyo was a seminal moment in the context of developing the field of TJ theory in Japan. The therapeutic approach to criminals has gained a lot of popularity in our country.

At this juncture, it is necessary to recall the significance of this

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<sup>24</sup> See, <http://nishitani.yuko-lawyer.com/blog/?p=641> (in Japanese) Accessed 10 January 2018.

<sup>25</sup> <https://www.nikkei.com/article/DGKKZ021476710U7A920C1CR8000/> (in Japanese) Accessed 10 January 2018.



approach. It is also important to focus on the need to promote TJ in Japan. First, it is important to promote TJ in order to influence policy-making at the Parliamentary level. In other words, it is important to lobby for the therapeutic approach to criminals in order to influence criminal policy. Moreover, the general public continues to demand harsh punishment for offenders, especially repeat offenders. The Members of Parliament may not be able to ignore the demand for harsh punishment even if they recognize the importance of rehabilitation. In order to develop a rehabilitation-oriented criminal justice system, it is essential to obtain the support of these representatives. Therefore, it is important to lobby persistently and ethically.

Second, it is important to develop a significant body of research about the ways in which TJ-based criminal justice systems function in different countries. In other words, it is imperative to obtain a global perspective. Thus, it falls on the TJ research team and the Center to identify and translate seminal materials in other languages in order to improve the discourse about TJ in Japan.

Third, it is important to revise the legislative practice that prevent offenders from seeking rehabilitation. For instance, certain clauses in the Penal Code requires the court to order imprisonment for specific repeat offenders; as a result, these offenders are rendered ineligible to receive a suspended sentence. These clauses need to be revised in order to allow defendants to seek rehabilitation. The best means to challenge these clauses is to present arguments to judges during a trial. Lawyers should also be capable of ascertaining the constitutionality/ unconstitutionality of a specific clause, especially since Article 13 of the Constitutional Law guarantees the right to happiness to all citizens. Courts, therefore, must interpret each clause from the perspective of this Article. Currently, the Center is involved in initiating constitutional litigation at a local district court in order to abolish a specific clause of the Penal Code, which mandates severe punishment for repeated offenders.

However, it must be remembered that the therapeutic approach to criminals is still in a nascent stage in Japan.

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