

An Overview of Traffic Crime and its Criminal Punishment in Japan

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要 旨

日本の法学者・法の専門家は、日本における交通事故及び交通犯罪を重要な問題として取り上げている。1960年代から現在に至るまでのそれらに関するすべての法的処理(民事・刑事・行政)について検討してきたが、交通犯罪者及び交通違反者等の法的処理に関する英語文献は少ない。この現況を考慮して、交通犯罪の種類、捜査、裁判過程について包括的に分析し、英語で記述することを試みた。さらに、本研究は、刑事手続における各機関(警察・検察・裁判所)の役割と処分の種類(懲役・禁固・罰金)等についても考察を行った。

Keywords: Traffic Crime, Traffic Crime Investigation, Criminal Procedure, Traffic Law and Criminal Law Reforms

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. Introduction

In Japan, a law student can find vast legal resources written or translated into Japanese from abroad. This is a very interesting scientific phenomenon showing that legal Japanese scholars are very well skilled in one or more foreign languages. However, the production of valuable legal resources describing the Japanese legal system in foreign languages is almost non-existent. For instance, in the area of *traffic crimes and traffic offences*, there is only very limited material available in English, which is a widely, understood language in the academic community. In addition to this interesting social phenomenon, the number of foreigners is increasing in Japan, but much of the research or information concerning *traffic crimes, traffic offences*, and their *respective punishments* is available only in Japanese.

Nowadays, the usage of a car, besides being a commodity, has become a necessity throughout the planet, including Japan, which is a pioneering country in the production of cars. In Japan, since 1955, the demand for vehicles started to increase, and by 1975, most of the young generations were driving-license holders. In 1975 there were 28 million 930 thousand vehicles, and 33 million 480 thousand ¹ driving-license holders (Takizawa,1986) out of a population of 111,524.0 million. This figure includes active drivers, and potential drivers who would be able to sit behind the wheel at one time or another. An increasing pattern concerning driving-license holders continued until the present (2003), where 89 million 344 (Houmushou,2002) thousand out of a projected population of 127 million 635 ² thousand are legally able to drive a vehicle.

This study attempts to focus on the legal treatment of traffic offences and traffic crimes stated in Japanese Criminal Code (JCC), and its Criminal Procedure (JCP). Consequently, the follow up process after a traffic offence or crime has been committed until the execution of the corresponding criminal punishment is also addressed. Thus, the role performed in the follow up process by institutions such as the police, the prosecution office, as well as the court, is considered. This study is an attempt to increase the materials describing the Japanese Criminal Justice System, in a more widely understood language. An **Overview of Traffic Crime and its Criminal Punishment in Japan** endeavors to produce basic information concerning the legal treatment of offences, and crimes in the traffic arena. In addition to this, it will be available for

future comparisons with non-Japanese speaking countries. Finally, this study also shows the degree of control, rigidity, and tolerance the Japanese society willingly prescribe to traffic criminals and traffic offenders.

. Traffic Accidents and Traffic Crimes

1. Definition of Traffic Crime

A traffic crime is committed by the driver of a car or by the employer of the driver, when the fixed mandates, prohibitions and controls enacted in 1960, in the Road Traffic Law (RTL), and other laws concerning traffic are violated. The acts of violation have a corresponding penal and/or administrative regulation depending on the degree of **intention** or **negligence** of the vehicle's driver. There are also considered parties involved in the causation of the traffic offence, any death, injury or injury that results and/or material damages are included. In addition, when a vehicle becomes a weapon to infringe personal and material damages, the accident is categorized as a forged traffic accident crime (Takezawa, 1986).

(1) *Traffic crime under penal regulations established in RTL* ³

This type of crime is referred in Japanese as (koutsu ihan) or in English as a **traffic violation** or **traffic offense** (from now on traffic offence will be used). It aims to prevent risks on the road and to guarantee safety, and encourage efficient traffic on the road. It also secures an administrative objective aiming to put a stop to the causes of danger and damages on the road. The sanctions corresponding to the traffic offenses to RTL are as follows:

In addition to an administrative pecuniary sanction, a driving license suspension or point deduction from the driving license;

A criminal punishment consisting of imprisonment with compulsory labor (for up to 5 years), imprisonment (for up to 6 months) or a fine (up to 100,000 yen) and a driving license suspension;

An ordinance penalty consisting of a minor fine, and a driving license suspension or points deduction

from the driving license.

A criminal traffic offence-case has specific treatment when considered as a slight offence (low- risk traffic offence) and is treated with a pecuniary sanctioning-system, known in Japanese as "*hansoku-kin-seido*." "Hansoku" literally means foul, "kin" means money, and "seido" means system (Nakane, 1966 & 1979). Such traffic offences include those occurring in everyday-life, for example, parking offenses, failure to stop at the pedestrian crossing, failure to make a brief stop at the intersection, etc, RTL requires the perpetrator to pay the pecuniary sanction within 10 office-working days. After those 10 office-working days if the pecuniary sanction is not paid, it will become a criminally prosecutable offence. This means that there is a criminal law shadow behind the pecuniary sanctions (Benitez, 2002). In fact, the traffic offences are legally categorized as administrative crimes, therefore being differentiated from the natural crimes. Although also categorized as administrative crimes, drunken-driving, and hit-and-run crimes fall into the category of "high level of danger", which are behaviors against the basic daily-life accustomed order.

(2) Within the traffic crimes category; there is a traffic accident- type caused when a driver of a vehicle (automobile, bike, light-car, etc.) performs a negligent act resulting in the causation of death, personal or material damages.

Types of accidents caused by negligent acts: There are two main categories of injuries resulting from traffic crimes. personal damages, and material damages. There is also a sub-category, derived from personal damage caused by a hit-an-run traffic accident (Takizawa, 1986).

Personal damages: when the driver of a vehicle causes bodily injuries or death, such act is typified in the Japanese Criminal Code ⁴(JCC) as follows: 1. Criminal negligence during the performance of duty (JCC §211 first section; 2. serious personal injuries or death (§ 211 second section); 3. Personal injuries or death (§ 209, and § 210).

Material damages: when the driver of the vehicle intentionally causes material damages, such act is viewed as damage or destruction of property. In JCC § 260 it is stated that a person who damages, destroys, or injures another's property shall be punished with *imprisonment for not more than three years or a fine of*

not more than three hundred thousand yen (about USA \$ 2,400).

In addition, depending on the degree of intention and the magnitude of the damage, this act is punished with imprisonment for more than five years (JCC § 260). When the damages are the result of merely negligent behavior, the previous articles do not apply. However, § 116 RTL states that when there is serious criminal negligence and the destruction of structure of a third party is caused, such act is criminally liable or charged (Takizawa, 1986). The perpetrator is penalized with less than six months of imprisonment or a fine consisting of one hundred and fifty thousand yen (about USA \$ 1,200).

A hit-and-run traffic accident: when a traffic accident occurs the parties involved are under an obligation to take measures such as to provide aid to the victim or victims of the accident and to report the accident to the police (RTL § 72-1), if they fail to do this, RTL § 117 establishes sanctions of less than 3 years imprisonment with mandatory labor or a fine of less 200, 000 yen (about USA \$ 1,600). Depending on the characteristics of the offence, RTL § 117 part 3, numeral 1 may be applied which establishes less than 1 year of imprisonment with compulsory labor or 100,000 yen (about USA\$ 800). Again, if the offense is less severe, RTL § 119 section 2, numeral 10 may be applied which establishes less than 3 months of imprisonment with mandatory labor or a fine of 50,000 yen (about USA \$ 400). Finally, a hit-and-run case involving the obstruction of aid, or failure to report to the police, results in sanctions established in RTL § 72 paragraph 2, and RTL § 120-2. (Traffic Law, 2003). A statistical background describing the hit-and-run case is shown in table (5) in the appendix.

(3) The car is used as a weapon: this offence includes, firstly when the car is intentionally used to cause a traffic-accident crime, and secondly when the probability of willful negligence is very high. Thus, someone who intentionally crashes his or her car aiming to cause their own death or personal injuries is liable. This type of traffic-crime category sounds a bit nonsensical but in Japan, a country in which suicide is relatively high, there have been several cases. These types of accident- crimes are often committed to accomplish monetary insurance fraud. However, when this crime is committed, it is very difficult to differentiate it from common negligent traffic-crime. Therefore, the police have to manage a very detailed investigation to be able to separate this camouflaged intentional traffic crime from the negligent ones.

2. Traffic Law and Criminal Laws Reforms

Last reforms of the traffic law of Japan (2001) (Benitez, 2002);

Hit-and-Run previously: under 3 years of imprisonment with mandatory labor or a fine under 200,000 yen.

After: under 5 years of imprisonment with mandatory labor or fine under 200,000 to 500,000 yen.

Driving while intoxicated previously: under 2 years of imprisonment with mandatory labor or a fine of 100,000 yen.

After: under 2 years of imprisonment with mandatory labor or a fine of 100,000 yen.

Drunk driving previously: under 3 months of imprisonment with mandatory labor or a fine under 50,000 yen.

After: under 1 year of imprisonment with mandatory labor or a fine under 300,000 yen.

Driving without license previously: under 6 months of imprisonment with mandatory labor or a fine under 100,000 yen.

After: under 1 year of imprisonment with mandatory labor or a fine under 300,000 yen.

3. Types of Traffic Crime

(I) Administrative-criminal traffic crime (*koutsuu gyousei keihou hannzai*)

RTL offence: RTL § 8 states that "pedestrians or vehicles. . . must not pass through a road or a part thereof where the passage is prohibited by road signs, etc" (EHS Law Bulletin Series, 1979). It is possible to classify the traffic offences in relation to the pedestrians, drivers and the obligations of the employers of the driver. Additionally, the classification can be made according to the nature of the traffic offence concerning the acts involved in its performance. This can be objectively classified as follows:

a. Traffic offences concerning time and location: e.g. RTL § 70 and RTL § 119, paragraph 1, item (9) makes an offence concerning safe-driving behavior including, failure to make a brief stop at the pedestrian crossing, the usage of a handy phone while driving, etc. Not stopping at a traffic light and is governed by RTL § 43, and failure to make temporary stop at the intersection, etc, RTL § 119.I (1 of 2), and RTL § 36 (2)

b. Traffic offence concerning the continuity of an act for a limited time with place- transference: this

includes all of the speeding offences governed by the RTL § 22. Also, under RTL § 29 & RTL § 30 no-passing offences and division crossing offences, etc, are included.

c. Offences concerning fixed time-continuity and place- transference:

(a) attributes related to the driver.

1. Absolute traffic offense: for example RTL § 64 driving without a license, or driving when the license has been suspended.

2. Relative traffic offence: for example as stated in RTL9 § 65 (1) an offence to drive being heavily drunk or being slightly drunk while driving, RTL § 66 states that it is an offence to drive after overwork etc.

(b) offense concerning the attributes of the vehicles:

1. Absolute traffic offences: for example, RTL § 62 offence concerning the bad maintenance of the vehicle or bad parts making the vehicle dangerous or un-road worthy.

2. Relative traffic offence: e.g. RTL § 55, RTL § 56, RTL § 57, RTL enforcement ordinance §22 which states that it is an offence if the number of passengers or loading overpasses the capacity of the vehicle. RTL § 52, and § 63 states that it is an offence to drive a vehicle without lights, etc.

Other traffic offences concerning the traffic

(1) Besides the *Administrative –criminal traffic crimes* (offences dealt with by the Road Traffic Law,1960), there are other types of offences concerning laws regulating the traffic in Japan. For example, ***Traffic (Circulation) Law(TL)***chapter 8 and it's specifics, TL § 99 which deals with road administration, protection and maintenance, and TL § 101 which covers non-crossing offense. ***Law concerning Vehicle Circulation in the Public Highways*** chapter **four** and its articles, for example crime damaging the highway TL § 26, Road administrator's ordinance offense TL § 30, are also seen to regulate the traffic in Japan.

(2) ***Law concerning Road Transportation*** chapter 8, for example § 106, regulating the procedure for registration number alteration, § 109-1 stating the offence of number failure to keep the vehicle's registration number, and § 109 number 6, stating the offence of failure to have the vehicles' revision identification.

(II) Criminal acts concerning traffic: Traffic Crime with Criminal Negligence,(Koutsuu, 2002)

Traffic Crime with Criminal Intention, Special Traffic Crime

Traffic Crime with Criminal Negligence

These crimes can be categorized as follows:

- a. Vehicles vs. persons,
- b. Vehicle vs. bicycle,
- c. Vehicle vs. vehicle,
- d. Vehicle vs. other,
- e. Vehicle vs. railway crossing, etc.

In addition, a separate classification can include hit-and-run with personal damages and hit-and-run with material damages.

Traffic Crime with Criminal Intention

These crimes can be categorized as follows:

- a. Deliberate intention,
- b. The summary or the ending result indicates deliberate intention.

Special Traffic Crime

These crimes can be categorized as follows:

- a. Camouflaged traffic crime,
- b. Crime committed just after the occurrence of a traffic accident,
- c. Intellectual crime against the traffic system.

III. Traffic Crime Investigation

1. Investigation and Generalities

It is now necessary to describe and discuss the procedure following a road traffic accident. Generally, (after any kind of criminal case or traffic accident), the first institution to respond to the information concerning a traffic accident is the police. If the traffic accident has *serious criminal implications*, the police will conclude the investigation phase, and after this the case passes to the criminal prosecution office. This institution in Japan enjoys an enormous discretionary power to decide whether the case will be closed at this point (non-prosecution), or if the indictment will be continued further to a summary or formal court procedure. In these cases, if the traffic crime perpetrator is found guilty, he or she has to face the sanction decided and imposed by the judge.

The criminal procedure starts with the investigation phase. The investigation institution (which at this level will be restricted to the police), is described in the Code of Criminal Procedure (CCP 1948), book II, FIRST INSTANCE, Chapter I Investigation, police investigation (8). The CCP § 189 states, 1. "Any police officer shall perform his or her duties as prescribed in other laws, or as established by the National Public Safety Commission or the Prefecture Public Safety Commission"; 2. "Any police officer shall, when he or she considers that there exists an offence, investigate the offender and evidence". The National Police Agency takes part in the investigation of the following traffic incidents: general traffic crime, a hit-and-run case, and a special traffic accident case.

2. General Accident Case Investigation

Traffic accident crime involving death, personal and or material damages was before the end of the 2001, dealt with by JCC § 211 concerning the *death or bodily injury, etc. caused by negligence in the conduct of business*. In 2001 (Nov.28.2001) the Japanese legislature changed the legal treatment of traffic crimes by reforming both JCC § 211, and JCC § 208(Okano, 2000). At present, JCC § 208 (2) and JCC §208 (2) 2 are concerned with the legal treatment of traffic crimes by punishing *dangerous driving: causing death and injuries*. JCC § 211, §211-1, § 211-1b, and § 211-2 punish those traffic crimes that resulted in the *death or bodily injury, etc. caused by negligence in the conduct of business*. When a common traffic crime occurs,

those involved are investigated under the suspicion of the perpetration of a crime described under JCC § 211, and JCC § 208 (Okano, 2000).

Dangerous driving: causing death and injuries JCC § 208 (2) was partially reformed on Nov.28: 2001, and implemented on Dec.25: 2001.

While controlling four-wheeled vehicles, the driver performs intentionally dangerous act and dangerous driving which causes an accident resulting in death and/ or personal damages, this makes him or her subject to ***imprisonment with compulsory labor***. This crime includes the following crime elements (Inoue, 2002):

Failure to perform the precise maneuvering (operation) of the vehicle because of the influence of alcohol or any other kind of drugs (driving while intoxicated).

Have difficulties to control the propulsion of the vehicle at high speed and lacking the basic driving skills (inability to handle the breaks and the like) to drive in a conditions that he or she is unable to uphold.

To intentionally disturb the transit of other vehicles, to abruptly break or jump into the line of other vehicles at a dangerous speed, and to adopt actions such as moving one's car or running in zigzag while driving.

To ignore the red lights at a dangerous speed while driving.

- If one of these four conditions is part of a traffic accident, in which the detrimental lost of life is involved, the driver shall be punished by imprisonment with compulsory labor for a period no less than one year and no more than 15 years.
- Also if one of these four conditions is part of a traffic accidents in which personal injuries are caused, the perpetrator shall be punished by ***imprisonment with compulsory labor*** for a period no more than ten years.

Table N.1. Nine months of enforcement of the JCC § 208 (2)

Dangerous driving: causing death and injuries

<i>FOUR ELEMENTS OF CRIME</i>	Number of Cases	Percentages
1. Driving under the influence of alcohol and other drugs	108	53%
2. Ignoring a red light or special sign	69	34%
3. Losing propulsion of the vehicle at a difficult high speed	22	11%
4. Disturb the traffic intentionally	4	2%
Total of cases	203	100%

Source accessed on January 9, 2003: http://www.jaf.or.jp/qa/advice/answer/K/K_16.htm

From the cases mentioned above, 41 cases (20%) caused death. More than half of the cases involved serious drunkenness and other cases in which there was also certain degree of alcohol influence, totalling about 70% (136) of the cases involved the use of alcohol. In addition, the hit-and-run cases totalled 30% (58 of cases). Driving without a license was about 10% (24 of cases). Before the Japanese Criminal Code, reforms, most of the cases were treated under JCC § 211 resulting in *death or bodily injury, etc. caused by negligence in the conduct of business*.

As it was above-mentioned, before the partial reformation of the Japanese Criminal Code all the 203 cases could be treated under the criteria of JCC § 211 *death or bodily injury, etc. caused by negligence in the conduct of business*. However, the new JCC introduces the element of "*intentionally performing dangerous driving " under the influence of alcohol and other malignant causation of criminal acts. How ironic "Is it a death or bodily injury, etc. caused by negligence in the conduct of business?"*" At this point, it is evident that there is an unreasonable part in the actual reformation of the Japanese Criminal Code. The difference between JCC § 211 *death or bodily injury, etc. caused by negligence in the conduct of business* and JCC § 208 (2) *dangerous driving: causing death and injuries* is that the latter crime was caused intentionally. As a result, it is evident that the punishment under JCC § 208 (2) shall be more severe than the one stated JCC § 211.

Table N. 2. Comparison between the punishments of traffic crimes established by JCC

The new JCC § 208 (2), dangerous driving: causing death and or injuries		The old JCC § 211, death or bodily injury, etc. caused by negligence in the conduct of business	
Circumstances	Punishment	Circumstances	Punishment
Death	Over 1 year and under 15 years of imprisonment with mandatory labor	Death	Under 5 years of imprisonment with mandatory labor
Personal Injuries	Up to 10 years imprisonment with mandatory labor	Personal Injuries	Under 5 years of imprisonment with mandatory labor

Source: Japanese Criminal Code 2003 (Inoue, 2002).

2.1 Circumstances for filing a general traffic accident case

2.1.1 *Filing Circumstances:* in 1960 and 1961 the traffic accident cases filed by the police to the prosecution office on suspicion of causing *death or bodily injury, etc. caused by negligence in the conduct of business* reached its peak (Kitamura 1975).

Table N. 3. Japanese traffic circumstances during the 1960's and 1970's (Kitamura, 1975).

Year	Classification		Demanding Trial		Summary Court Procedure			
	Prosecution office finalization & treatment of cases	Indictment	Real Number	Comparative %	Real number	Comparative %	Non-Indictment	Indictment %
(S44) 1969	603,333	438,940	12,262	2	426,678	98	164,393	73
(S45) 1970	638,083	457,012	16,054	3	440,958	98	181,071	72
(S46) 1971	607,125	423,570	15,027	3	408,543	98	183,555	70
(S47) 1972	594,386	405,919	15,195	3	390,724	97	188,467	68
(48) 1973	543,135	365,487	13,465	3	352,022	98	177,666	67

Source:

1. Information provided by the prosecution office,
2. The comparative percentage is deducted by taking as 100% of the number of indictments,
3. See also table N. 4. in the appendix for more details.

IV. The Criminal Punishment

1. At the Police Level (Keisatsu-sho)

Administrative Pecuniary Sanctions

In the year 2002, the police enforcement of RTL resulted in 7,807,868 cases. In Japan, the police issues an administrative punishment to every traffic offender. From the total, mentioned above, 6,867,396 (80%) of the cases were finished at the police level, by issuing only an administrative pecuniary-sanction. The remaining 940,472 cases (20%), besides the imposition of the administrative penalty, the police also passed such cases to the prosecution office seeking criminal liability. In the year 2001 the number of arrests concerning § 209 (Bodily injury caused by negligence), § 210 (Manslaughter caused by negligence), § 211 (Death or bodily, caused by negligence in conduct of business) totalled 812, 639 cases, and in the year 2002 the number amounted to 870,605 cases. Every year the number of arrests has shown a slight increase (see table (5) for more details).

2. At the Public Prosecutor's Office Level (Kensatsu-chou)

The main objective of this institution is to protect the public interest or the public benefits. In order to pursue this main objective, the prosecution officer has the following types of power:

It has the authority to perform investigation concerning crimes.

It has the authority to take public action (prosecute) a criminal case.

It has discretionary power to prosecute or not to prosecute a case.

It has the power to request to the court to apply fairness according to the law in a criminal case.

It has the power to direct the court trial in a criminal case.

It has the power to order the enforcement of the punishment.

It assigns the court authority and other matters concerning the necessary conditions of its duties, for example making a request to the court for a notification, and the authority to express its ideas to the court.

It has the authority to perform other functions established in the Japanese laws and ordinances.
(Niwayama 1994, Tamiya 1992, Mitsui 2001)

The prosecution officer receives the accusation from the Police, or by detecting it by itself and then prosecuting it. Based on the police investigation or on its own investigation, the prosecution officer deals with the case. This includes:

- the application of final punishment,
- the in-between (half-way) punishment,

The final punishment is then divided in (a) non-prosecution and (b) prosecution treatment.

(a) Non-Prosecution treatment: (1) including death of the suspect, disappearance of the corporation, an offence subject to prosecution only on complaint of the victim (himself or herself), lack or absence of demand, invalid demand, and cancellation of the public prosecution case. (2) Criminal case perpetrated by a minor, or someone with a mental disorder. (3) Absence of suspicion, or lack of evidence supporting the suspicion.

(b) Prosecution treatment: the prosecution office demands a court trial (seishiki-saiban), a summary or simple court (kani-saiban), and summary justice (ryakushiki-tetsuzuki) for the offender.

In the year 2002 (Houmushou, 2002), the public prosecution office accepted 2,206,980 cases, which is 32,113 higher than the year 2001. The criminal cases totalled 1,197,130, which showed 50,727 (54.2%) cases more than the year 2001 (Houmushou, 2001). The crimes performed against the special laws amounted 1,009,850 cases showing 18,614 (45%) less than in the year 2001. If the traffic crimes related cases are taken off, the total criminal cases were 309,894, showing 17,372 (14%) more than in the year 2001. Additionally, if the traffic offenses are taken away from the special laws, the total is 93,761 cases, 2857 (4.2%) higher than the previous year. In sum, from the total of criminal cases (2,206,980) filed to the public prosecution office 41.5% corresponded to traffic offences in the special law-offences section, and in the

criminal cases 40.2% were related to negligent crimes while the conduction of a vehicle.

In the year 2002, the cases received by the public prosecution office were handled as follows:

From a total number of 2,219,801, 40.2% were solved by performing a summary court, 39.9 % with indictment reprieval, 11.9% family courts, and 5.9% formal courts demand, and 2.2% were not prosecuted. In the year 2001, from the total of cases handled by the public prosecution office, 13,038 (5.9%) offender's cases received indictment in a normal court hearing. Furthermore, the number of offenders receiving their indictment in a summary court (kani-saiban) totalled 892,613 cases (40.2%); the number of offenders receiving their indictment reprieval totalled 885,085 (40.2%); other forms of non-prosecution 47,744 cases (2.2%). Finally, the total of offenders indicted in a family court totalled 4,321 (11.9%) offenders. See table (4).

3. At the Court Level (Saiban-sho)

In the first trial criminal court, as a general rule, the district court (Chihou-Saibansho), the family court procedure or simple (summary) court's (Kani-Saiban) the judgment delivered to the prisoner can be appealed to a higher court (Koutou-Saiban), and the final appeal can be brought to the Supreme Court (Saikou-Saiban). When the punishment corresponding to the crime is a criminal fine or less than 50,000yen, the crimes belongs exclusively to the summary courts. The rest of crimes are indicted in the district court as a first trial criminal court.

Court settlements: In the year 2002, 19,778 offenders (2% less than the year 2001) were processed. From that total, 4 offenders were sentenced to death. Life imprisonment (muki-choueki) with mandatory-labor totalled 68 offenders. In addition, the number of offenders declared innocent totalled 44.

District court (Chihou-Saibansho): In the year 2002, the number of cases handled by the district court and the family courts procedure under ordinary process was 81,503 offenders (8.4% from the total number).

Summary court justice (Ryaku-Shiki-Tetsuduki): An overwhelming 891,792 (91.6%) of cases were treated in this court justice process. From these cases, stimulant and drugs related cases totalled 3,099 (20 %). The remain traffic offences were classified as traffic laws offences (12.9%), theft (12.5%), and criminal negligence (9.5%).

Summary court (Kani-saibansho): In the summary court, the total of cases processed amounted to 10,974 which is 88 offenders less than the year 2001. The 95.2% of the theft offenders were sentenced to imprisonment with mandatory labor. Those offenders causing personal injuries or traffic law offences receiving a criminal fine sentence totalled a 46.6%.

Summary court (Ryaku-Shiki-Tetsuduki): Those treated under the summary procedure totalled 891,792 cases. The overwhelming number of cases was led by traffic law offences (84.6%), see table (4) in the appendix.

V. Discussion

After post-war-Japan, some of the central problems threatening the Japanese society are not typical street-violent-crimes, but instead, different phenomena such as "*traffic accidents*" and "*traffic crimes*" have made a striking impact. The search for answers to the following questions should be established: which have been the legal response and treatments applied to traffic criminals, and traffic offenders? In addition, which are its implications? Before searching for the response to such questions, it is necessary to make an outline of the crime conditions in Japan. In Japan, the likelihood of being victimized by a traffic crime is higher than any other type of violent crimes. For example, in the year 2002, from 401,126 criminal cases reported (without the inclusion of the traffic offenses and traffic crimes). The statistics were as follows: criminal crimes 309,624, murder 1,558, robbery 4,373, injuries 35,874, threat 35,874, rape 1,725, others 105,807, infringement of special laws 91,502, gun and swords law infringement 4,734, possession of narcotics 26,405, and others 60,336.

On the contrary, the number of traffic offenders detected by the police enforcement of RTL totalled a massive 7,807,868 cases. From this total, 6,867,396 (80%) cases were processed administratively by ordering the offender to pay an administrative pecuniary sanction; and the remaining 940,472 of the cases were sent by the police to the public prosecution office. Moreover, the number of general cases concerning traffic crimes sent by the police to the public prosecution office amounted to 403,137; the number of cases concerning a criminal offence related to JCC § 211 death or bodily injury, etc, caused by negligence in the conduct of business was 887,071. Finally, the total of cases concerning traffic law offences was 929,593 (41.88%). This shows that the public prosecution office received 2,219,801 cases, from which 929,593 (41.88%) were traffic offences, and the remaining 1,290,208 (58.12%) were also traffic-related crimes. As mentioned earlier, in the year 2003, the Japanese projected population is 127 million and 635 thousand, from

which 89 million 344 thousand (70%) are driving-license holders and legally able to drive a vehicle.

What has been the legal response and treatment applied to traffic criminals, and traffic offenders? In the ambition to decrease traffic offences and traffic crimes, a very 'tough policy' has been applied in Japan during the implementation of the 43-year-old Road Traffic Law and the 96- years-old JCC. This very 'tough policy' can be visualized by considering the following issues:

Reforms to the Japanese Road Traffic Law,

Modification of the Japanese Criminal Code,

The treatment of most of the traffic accident resulting in death or injuries as an offense of JCC § 211 death or bodily injury, etc, caused by negligence in the conduct of business vs. RTL,

The punishment of the traffic offenders and traffic criminals.

Reforms to the Japanese Road Traffic Law:⁵

Japanese Road Traffic Law (JRTL), Law N°. 105, June 25, 1960.

This law has the following important amendments concerning this study:

1. Law N°. 91, June 1, 1964, 2. Law N°. 96, June 1 1965, 3. Law N°. 126, August 1, 1967, 4. Law N°. 138, December 5, 2001, 5. Law N°. 77, June 19, 2002, (To be applied April 2003).

The Japanese Road Traffic Law has been amended or modified 41 times within a period of 43 years. This is quite an unusual phenomenon in the Japanese law, as it is widely understood that Japanese legislators have a strong resistance to change their country's primary laws. It also shows how the Japanese legislators have been forced to adjust their Road Traffic Laws and to adopt a 'tough policy' tendency every time such law has been modified. Quantitatively speaking, the traffic crimes have represented the biggest problem in the Japanese legal system. As the statistics described throughout this study show, in both crimes against the Japanese Criminal Code and in other laws, the criminal offences against the traffic law, and the crimes against the JCC § 211 death or bodily injury, etc, caused by negligence in the conduct of business represent an overwhelming majority. The crimes against RTL reaches its peak in 1965, when about 4.6 million cases occurred. This caused the Japanese court system to almost collapse, and the number of people with criminal records increased to 4.5 million. This forced the Japanese legislators to modify again, the only recently modified road traffic law, (Law N°. 91, June 1, 1964, and Law N°. 96, June 1, 1965).

Furthermore, the traffic offenders who were not officially processed as criminals totalled about 14 million a year at that time. Again, because they were taking such offenses seriously, the Japanese legislators amended the traffic law again two years later (Law N^o. 126, August 1, 1967). This time, it modified the difference in treatment for adults (offenders being 20 years old and above at the time of committing the offence or crime) and for juveniles (offenders being under the age of 20 years at the moment of the committing the traffic offense or crime). This RTL opened the way for the decriminalization of the traffic offenses by giving to the Japanese police, the power to treat non-serious offences administratively as non-crimes. This dispositions attributed to the police is known as "trivial dispositions" from the Japanese "bisai -syobun". Almost all non-serious offenses against the RTL are processed through the special administrative bypass procedure called "the traffic offences notification system" known in Japanese as (Kotsu-hansoku-tsukoku-seido). This system includes an administrative pecuniary sanction, known in Japanese as "hansoku-kin" (which is similar to what is called a traffic ticket in western countries), as well as a point deduction system from the offender's driving license. The number of traffic offenders processed under this new system amounted to more than 10 million per year at that time. This RTL amendment meant that the offences against it fluctuated to about 2 million during the 1970's. The Law N^o. 138, December 5, 2001, became tougher, not only for the traffic offenders (the driver), but also for the licensed driver who sat in a car with the driver who commits the traffic offence. All the three types of punishments have been increased enormously. For example, to drive under a light influence of alcohol, the punishment will be either the (1) suspension of the driving license, § 117 RTL (2) a fine of 300, 000yen or (3) less than one year of imprisonment with mandatory labor.

Modification of the Japanese Criminal (Penal) Code (Law N^o. 45, April 24, 1907):⁶

Important Amendments concerning this study: 1. Law N^o. 61, May 21, 1968, 2. Law N^o. 91, May 12, 1995, 3. Law N^o. 97, November 26, 2001, 4. Law N^o. 138, November 26, 2001, 5. Law N^o. 153, November 26, 2001.

It can be seen that the Japanese Criminal Code has been reformed at least 16 times in its 96 years of enforcement (Law N^o. 45, April 24, 1907). Japanese legislators tend to amend the special laws instead of reforming the basic main laws. Parts of the Japanese Road Traffic Law are just like an extension of the Japanese Criminal Code, even though RTL is supposed to be an administrative law. In the case of traffic accident involving body injuries or death, the Law N^o. 91, May 12 1995, amended the following articles: § 199 (homicide), § 203 attempts), § 204 (bodily injury), § 205 (bodily injury resulting in death), § 208

(violence) § 209 (bodily injury caused by negligence), § 210 (manslaughter caused by negligence), § 211 (death or bodily injury, caused by negligence in conduct of business). All the previous articles have been used at one time or another to treat traffic accident cases resulting in bodily injuries and/ or death with the exception of § 208. However, due to the tremendous increase of traffic accidents involving dangerous driving, the Japanese legislators decided to make **dangerous driving an intentional crime** and by doing so, they added JCC § 208 (2) dangerous driving: causing death and/or injuries. In addition, the legislators also modified again, the old JCC § 211 death or bodily injury, etc, caused by negligence in the conduct of business. This evident 'tough policy' adopted by the Japanese Criminal Code may be seen by the ordinary citizen as being relatively easy, but on the contrary, it is also seen as very tough, for at the moment an ordinary citizen could face up to 15 years in prison. Before December 26, of the year 2001 driver's actions whilst driving had been treated as a non-intentional crime. However, since then, the exactly similar behavior is punishable as an intentional crime carrying up to 15 years in prison. In a society in which 70% of its population legally has the right to drive a vehicle, the likelihood of being the perpetrator or a victim is very high. It is not clear how feasible the applicability of § 208 is, but it is just increasing one extra choice for the prosecution office and the judge. The recent modification can also be seen as a threat or incentive to keep drivers acting reasonably while on the road.

The treatment of most of the traffic accidents resulting in death or injury as an offense of JCC § 211 death or bodily injury, etc, caused by negligence in the conduct of business vs. RTL:

This article has been modified at least twice since the Japanese Criminal Code came into effect in (Law N°. 45) April 24, 1907. The laws amending it are the Law N°. 91, May 12, 1995, and the Law N°. 97, November 26, 2001.

In the year 2002, from the offences against § 211 of the Japanese Criminal Code: the number of offenders receiving fine as a punishment in a formal trial totalled 160. The number of offenders dealt with in a summary court procedure receiving a fine as a punishment, amounted to 92,774. In comparison, those who perpetrated offences against RTL going to a formal trial and receiving the duty to pay a fine as a punishment amounted to 338. In addition, the number of offenders treated in a summary court totalled 754,827. This means that the offences against RTL outnumber the offences against JCC. For the administration side, it is quite effective and less costly to apply summary court process to the traffic offenders. The number of

offenders against both JCC and RTL is enormous. The problem with the summary court process is that the accused does not have any right of appeal. The system is effective but somehow unfair, as it condemns and sentences someone without granting him or her the right to a formal trial and due process.

The punishment of the traffic offenders and traffic criminals:

As mentioned in , the number of traffic offenders against the JCC receiving the obligation to pay a fine as punishment, totalled to 92,934, and against RTL 755,167 cases. The total number of offenders were 848,099 cases. The percentage of offenders entering to some sort of correctional treatment as a result of the violation to JCC was 33% and the total of offenders against RTL, was 67%. The total of offenders imprisoned for infringing both RTL and JCC§ 211, amounted to 2,753. Offences against JCC§ 211 were 909, from which 717 were sentenced to imprisonment with mandatory labor, and 192 were just imprisoned. Concerning JTL, the total of offenders outnumbered the offenders against JCC as total 1844, with all of them having to serve time in prison with the requirement to perform mandatory labor. Again, this reflexes how the crack down on RTL offenders is becoming increasingly harsher. See table 4 for details.

Finally, it can be said that due to the enormous caseload for the court, it is quite unthinkable to provide formal trials to all traffic offenders and traffic criminals, for it will be expensive and time consuming. Some very interesting observations can be made about the Japanese system which differentiates it from those seen in Western countries. This includes the system's efficiency, the speedy trials, autonomy and the discretionary power of each institution forming part of the criminal system (police, public prosecution office, and the court).

VI. Annexes

Table N.4. Japanese traffic-crime circumstances during the last eleven years

Total				JCC § 211 Death			JCC § 211 Injuries				JCC § 210			JCC § 209	
Filed suspects				Filed suspects			Filed suspects				Filed suspects			Filed suspects	
Year	Filed Cases	Total	Juvenile	Total. Filed	Total	Juvenile	Total. Filed	Total	Juvenile	Total. Filed	Total	Juvenile	Total. Filed	Total	Juvenile
1992	576,224	602,865	59,127	9,566	9,978	1,089	566,191	591,872	57,806	60	70	25	707	945	207
1993	613,138	638,045	57,981	9,102	9,651	988	603,143	267,213	56,764	54	58	28	839	1,123	201
1994	636,102	660,750	53,076	8,792	9,154	875	626,562	650,745	52,026	45	48	16	703	803	159
1995	642,262	666,193	46,758	8,583	8,932	733	633,042	656,530	45,873	50	54	20	587	677	132
1996	653,039	676,927	44,171	8,364	8,668	664	643,923	667,396	43,321	29	29	10	723	834	176
1997	653,384	683,691	39,625	7,939	8,221	579	644,586	674,526	38,858	50	52	20	809	892	168
1998	618,510	643,887	36,679	7,579	7,931	505	610,175	635,135	36,028	46	46	7	711	775	139
1999	656,721	682,541	37,120	7,377	7,677	453	648,163	673,555	36,385	36	36	16	1,145	1,273	266
2000	738,425	764,752	37,602	7,178	7,481	418	729,831	755,651	36,812	37	37	8	1,379	1,583	364
2001	812,629	850,493	40,447	7,283	7,549	382	803,105	840,561	39,519	36	37	12	2,215	2,346	534
2002	845,909	870,605	40,218	6,689	6,889	325	836,981	861,322	39,379	34	38	12	2,205	2,346	502

Sources: (Houmushou, 2002)

Table N.5. Hit-and-run-case and its legal treatment process

Year	Total			Deaths		Serious injures		Lights Injuries		Victims		
	Total cases	Arrests	Total cases	Arrests	Total cases	Arrests	Total cases	Arrests	Total	Deaths	Serious injures	Lights Injuries
1992	19,376	16,051	419	379	1,968	1,679	16,989	13,993	22,328	423	2,071	19,834
1993	18,002	14,749	410	375	2,030	1,615	15,562	12,759	20,677	417	2,121	18,139
1994	17,215	14,033	400	362	2,048	1,618	14,767	12,053	19,758	408	2,129	17,221
1995	16,164	13,460	418	412	1,831	1,509	13,915	11,539	18,532	419	1,926	16,187
1996	15,460	12,285	391	366	1,734	1,436	13,335	10,484	17,369	397	1,787	15,455
1997	16,044	12,632	322	310	1,679	1,395	14,043	10,927	18,418	325	1,743	16,350
1998	16,139	11,892	297	291	1,658	1,262	14,184	10,339	18,653	300	1,711	16,462
1999	17,047	12,250	344	318	1,639	1,244	15,064	10,668	19,638	348	1,694	17,596
2000	17,513	11,499	332	316	1,674	1,212	15,507	9,971	20,236	336	1,716	18,184
2001	24,468	12,231	319	278	1,981	1,146	22,168	10,807	24,468	319	1,981	22,168
2002	26,219	10,935	313	286	1,955	1,024	23,951	9,625	30,198	310	2,026	27,862

Sources: (Houmushou, 2002)

VII. End Notes

- 1 <http://www.un.org/esa/population/publications/worldageing19502050/pdf/119japan.pdf>
- 2 <http://www.un.org/esa/population/publications/publications.htm>
- 3 United Nations Population Division, Department of Economic and Social Affairs.
- 4 The English translation of this document is titled the “Penal Code”, but the Anglo-American version is known as “Criminal Code”.
- 5 Japanese Road Traffic Law (2003).
- 6 Japanese Criminal Code 2003.

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