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Japanese Sentencing Practices: Creating an Opportunity for "Formal" Paternalism

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Abstract

In Japan, that has a western-style legal system, public sentencing guidelines do not exist. Officials enjoy great discretionary authority, and the system seems geared towards highly individualized sentencing. In the research on this topic, the way officials use their discretionary powers to give offenders an apparently individualized, rehabilitation-oriented treatment has received great attention. Research also shows, however, that cases are disposed of in relatively predictable ways. Nevertheless, the standards and policies apparently structuring sentencing decisions remain undisclosed – and, though known to some extent in practice, "unofficial". Based on an analysis of Japanese case-files, legal judgments, commentaries and statistics, this article argues that the Japanese state, by committing to proportional sentencing in practice, yet keeping sentencing standards and policies "unofficial", allows itself to use the legal system in an instrumental and paternalistic fashion (as opposed to dealing with individual offenders in a paternalistic way, by deciding what is best for them). By realizing and rewarding offenders' formal, though not necessarily "substantive" compliance, state authority and morality, as well as a hierarchical state-citizen relationship can be publicly reaffirmed.

Introduction

In this article I will examine (aspects of) the nature of Japanese sentencing practices, as well as the question of how we can, from a legal-sociological point of view, interpret these sentencing practices. This question follows from the perspective adopted here, namely that sentencing practices have meaning. They are, in the words of David Garland, "signifying practices", that are "part of an authoritative, institutional discourse which seeks to organize our moral and political understanding and to educate our sensibilities" (Garland 1990, 252). And so, looking at sentencing practices will tell us something about the way the sentencing authorities (attempt to) carry on their "institutional discourse", while it will also tell us something about the functioning of law and legal rights in Japanese society. Here I will first of all give a brief outline of the background against which the questions I will ask have presented themselves, after which I will formulate more precisely what those questions are, and how I will deal with them.

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1. Ideals and dilemma's in sentencing

What a judge will consider to be the most appropriate sentence will, obviously, depend on the sentencing philosophies and policies that inspire his/her decision. Sentencing philosophies can be divided into two basic (ideal typical) categories: (1) retributive philosophies, and (2) consequentialist, or utilitarian philosophies. Sentencing in retributive terms requires that the sentence is, in its nature and amount, proportional to the wrong committed by the offender. A certain "amount" of wrong is compensated by administering the appropriate amount of punishment. Sentencing in consequentialist terms, on the other hand, revolves around achieving a specific future goal. It is more concretely aimed at crime prevention, by means of, e.g., rehabilitation and the reintegration of the offender into society. Actual sentencing practices, however, will typically not allow for such a neat separation of philosophies. In Japan, as in many countries with a western(style) law, a hybrid sentencing philosophy, containing elements of both categories, is being employed, and accordingly, both retributive and consequentialist motives play a role in sentencing (Beyens 2000: 215; also see Harada, 2004; Honjō 2008: 198).

Nevertheless, in the past decades in the US and many European countries, much attention has been given - in terms both of research and policy development - to the question of how proportionality and parity in sentencing can be best realized, and conversely, how disparities in sentencing can be avoided.[1] In a number of countries and jurisdictions (e.g., US, England and Wales, Australia), sentencing guidelines have been implemented, while others (such as Scotland, The Netherlands, Finland) have started using aiding tools, such as databases of previous dispositions, to achieve greater uniformity and proportionality in sentencing – as well as prosecuting practices. Although the concept of guidelines allows for much variation, sentencing on the basis of guidelines is likely to result in a greater emphasis on (retributive) proportionality (in the terms of the guidelines), and less on consequentialism in sentencing.

2. Japanese sentencing practices

As in Japan formal sentencing guidelines do not exist, and officials enjoy great discretionary authority, the system seems geared towards highly individualized sentencing. In fact, in the research on the Japanese administration of justice, much attention has been given to the way officials use their discretionary powers to deal with offenders through (semi-) informal procedures, and give them a (apparent) tailor-made treatment, aimed at their reintegration and rehabilitation (Braithwaite 1989; Hayley 1998: 72; also see Sasaki 2000: 132; Johnson 2002: 114). At the same time, however, cases are disposed of in relatively predictable ways. Not only are there "going rates" (Tsuchimoto 2004; Harada 2004: 2; Johnson 2002: 65), prosecutors actually refer to guidelines and use computer databases to determine the sentence they will demand, as, it has been suggested, do judges (Johnson 2002: 66; Inagaki 2006; also see Japan Legal Bar Association 1998). Still, these "going rates" are not part of an official sentencing policy, and guidelines remain undisclosed.

The questions arising here, then, are (1) how can this apparent commitment to uniformity in sentencing be reconciled with the image of Japanese criminal justice as being geared to highly individualized sentencing and rehabilitation-oriented?, and (2) how can we understand this apparent paradox in terms of what these sentencing practices "signify", and what does it tell us about the functioning of criminal law and legal rights in Japan?

In order to address these questions I will first briefly examine the formal framework of legal rules and doctrine within which sentencing decisions are made. I will secondly take a look at the actual procedural context within which these decisions are made, and thirdly, (tentatively) place these sentencing practices against the broader background of Japanese legal history and the functioning of law in Japanese society. For these examinations, which are in part inspired by comparative legal observations, I will make use of case files, legal judgments, commentaries and statistics.

3. Legal provisions and doctrine

A. *Legal provisions*. For every crime there are statutorily prescribed penalties. These prescribed penalties, however, only give the judge a range within which to decide. Murder, for example, carries, *in principle*, a minimum sentence of 5 and a maximum of 20 years (which may again be shortened or lengthened). The prison sentence can also be undetermined. Murder is in addition punishable by death, but a judge may also decide to give a suspended sentence.

Besides these obviously quite vague prescriptions, there are in the Japanese Criminal Code no provisions directly relating to standards for sentencing. The *draft* of the revised Code of Criminal Procedure defines some very general guidelines, stating (in article 48) that the amount of punishment imposed should be in accordance with the criminal's culpability, and that the aim of punishment should be to contribute to the prevention of crime and the rehabilitation of the offender, and that judges should furthermore take into account (among other things) the offender's age, character and personal circumstances as well as the motive of the offence, etc.

Here we can thus see an example of a hybrid sentencing philosophy, which contains both retributive and utilitarian elements. Nevertheless, when it comes to making a concrete sentencing decision, the statutory prescriptions and the guidelines provided by (not enacted) law, will not be very helpful.

B. *Legal doctrine*. It is said that the mainstream legal doctrine on punishment and sentencing is that of "relative retributivism" – in other words, both retributive considerations play a part, as well as the aim to achieve special prevention (preventing the person on trial from committing another crime) and general prevention (preventing other people "in general" from committing crimes). The punishment meted out should correspond with the level of responsibility of the actor - in other words, be in (retributive) proportion to the crime. For the sake of achieving utilitarian purposes, giving a person a sentence that is lower than what he or she in terms of responsibility deserves should be allowed, while giving somebody a higher sentence than he or she deserves (because, e.g., the offender is considered to be a dangerous person) should not be allowed. (See Harada 2004; Ida 2004: 213-214; Endō 2005: 22-48; Honjō 2008: 198-199[2]).

4. Sentencing practices within their procedural context

There is one very important point of reference for judges when it comes to determining appropriate punishment, and that is the sentence demanded by the public prosecutor. The amount of punishment that the judge decides on is typically 20-30% lower than that demanded by the prosecution (Sasaki 2000: 44-45; Harada 2004: 3, 50). Public prosecutors are furthermore aware of this fact, and so when calculating the appropriate sentence, they take the 20-30% that judges will subtract into account (Johnson 2002). This circumstance allows us to make two observations: (1) the standards applied by judges and those applied by public prosecutors are essentially the same (also see Dando 1997: 328-329[3]), and (2) sentencing decisions are not just made by judges.

These two matters are of course related to each other: public prosecutors will have to take into account the standards that judges apply, or they cannot reasonably expect judges to go along with the sentence they demand. At the same time, one could say that public prosecutors have the initiative in this decision-making process, as they get to present their view first – a view judges tend to agree with ("minus 20-30%").

Accordingly, to get a good idea of how sentencing decisions come about, one will need to look at the sentencing decision in connection with the stage that precedes it, namely, that of investigation and prosecution. Obviously, dealing with all the various aspects of these stages of procedure would go beyond the scope of this article. And so here I will focus on two elements that play an important role in the decisions made by officials at both levels, namely the acts of confessing guilt and apologizing. These two elements have received much attention, often being discussed as symptoms of the importance attached to the act of admitting one's wrong and apologizing in Japanese culture (for example see Haley 1991 and 1998), and the lenient, "integrative" treatment that offenders may receive if they do indeed confess and show remorse (Shirai 1999; Sasaki 2000).

Here, however, I will discuss these matters here in terms of their more formal, "mechanical" role in the process through which decisions regarding sentences (and prosecution) are made. As I will show, looking at the role of these acts within these two stages of the course of criminal procedure will give insight into the apparent paradoxical combination of vast discretionary authority and rule guided decision making.

5. The role of confessions of guilt and apologies in the pre-trial and trial stage of criminal procedure

The pre-trial stage. Article 248 of the Code of Criminal Procedure states that "considering the character, the age and the circumstances (□□) of the offender; the circumstances and seriousness of the crime and the circumstances after the crime, a public prosecutor may decide to suspend prosecution." Prosecutors' decision in this regard thus obviously depends on a range of elements, but one necessary condition for suspending prosecution is the confession of guilt, accompanied by an expression of remorse.

In the past years (1999-2007), prosecution was suspended in around 40% of the general penal code offences (□□□□□ – White Paper on Crime 2008). And so, if offenders confess and show remorse, there is a good chance that they will avoid both trial and punishment. Still, this chance only exists if they confess—and often, once will not be enough[4]. The practice of making people confess in this way is on one hand related to the fact that confessions of guilt are, obviously, an important source of information both for the evaluation of the actor (for the sake of deciding whether to suspend prosecution or not), and a source of evidence. As acknowledgments of wrong doing, they are also, however, considered to be a first step on the road to rehabilitation (Tsuchimoto 1991: 98; also see Shirai 1985, 1988, 1999)[5].

This emphasis on confessions is not only a consequence of their vital importance for the suspension of prosecution, and in terms of evidence, but also because confessions are a virtual necessity if prosecutors wish to indict the offender. Prosecutors will only indict a person if they are close to a 100% sure that this indictment will result in a conviction, and a confession of guilt is close to being indispensable to make that happen, not in the least because judges "expect" confessions, and are, reluctant to convict without the (Johnson 2004:7; also see Sasaki 2000: 37; Foote 1996).

Given this importance of confessions for prosecutors' carrying out key parts of their duties (i.e. suspend prosecution and indict), it is not surprising that prosecutors have been observed to engage in plea bargaining-like practices (see Johnson 2001: 140-172 and 2002: 245-248). This is nevertheless an important observation, as it brings into focus an aspect of the "confession culture" that has received relatively little attention. Much attention has been given to the ways in which prosecutors exercise discretionary judgment based in part on an assessment of the sincerity of an offender's confession and remorse – to, in other words, the "substantive" importance of confessions and expressions of remorse. However, one could doubt whether a confession made as a part of a bargain would constitute a "first step on the road to rehabilitation" and how relevant it is whether the offender is truly sorry. After all, there is a *quid pro quo* relationship here: between an offender's acts (confessing), and the prosecutor's acts (offering a, relatively, lenient disposal).

The existence of plea bargaining practices accordingly draws attention to the formal, "mechanical" role of confessions of guilt within Japanese criminal procedure. While this importance may be most evident within the context of plea bargaining practices, there are more indications that there is a mechanical element to the exercise of discretionary judgment more in general, and the confession of guilt/expression of remorse as points of reference for such judgment.

Expressing remorse and confessing guilt are two important factors, within a range of factors that prosecutors refer to when determining how to deal with a specific offence and offender. Johnson, who has conducted a survey under Japanese public prosecutors, dealing with, among other things, their beliefs about factors influencing suspension of prosecution decisions, has found that most prosecutors believed (like many of their colleagues in other countries may do) matters related to the seriousness of the offence, likelihood of re-offending, remorse, prior record and motive to be very important in this regard (for the complete list of factors see Johnson 2002: 111).

If, however, public prosecutors had to make their assessment of offence and offender based only on unguided assessments of a complex of potentially relevant factors, starting from zero with every case, their job would obviously become very difficult indeed. Johnson also describes, however, how prosecutors need to consult their seniors about the disposal of a case. Prosecutors accordingly receive "institutional support," i.e., support that helps ensure consistency in the ways cases are dealt with. And so, one can (given also the caseloads that public prosecutors are faced with[6]) expect there to be "tracks" for "ideal types" of offenders/offences[7], or certain "going rates" if only for reference (see also Simon 1997). Confessions of guilt and expressions of remorse can as such be regarded as institutionalized factors of reference, vital for institutionalized ways of exercising discretionary judgement[8].

The trial stage. As already indicated, judges are said to expect confessions, and similar to what happens during the pre-trial stage of criminal procedure, confessing guilt and expressing remorse can result in a more lenient treatment – a more lenient, or a suspended sentence (in 2007 given in 56,6% of the cases – White Paper on Crime, 2008).

However, like public prosecutors, judges apply a "denial tariff". A confession made by the defendant is not simply a mitigating circumstance that may be absent or present. The absence of a confession, or the making of "irrational excuses" while confessing can be taken as an aggravating circumstance. Although as a matter of law a defendant can hardly be punished for asserting the right to remain silent, the absence of a confession of guilt and/or remorse can be (and is) interpreted as an indication of (among other things) a defendant's lack of moral consciousness, and is in legal judgments often listed under matters "unfavorable", and adding to the guilt of the defendant. Absence of remorse can furthermore be, and often is linked to a perceived risk that the offender will commit another crime[9].

Given the fact that Japan has a 99.9% conviction rate (White Paper on Crime 2008), one could argue that trials mainly have the function of confirming guilt (see in this regard also Hirano 1989; Ishimatsu 1989). As a consequence, the sentencing decision arguably is the only one that still leaves room for meaningful discussion. However, it is relatively little given the abovementioned correlation between the sentence demanded and the sentence pronounced (consider in this regard also the difference between a prison and a death sentence).

This shift from fact finding to "fact confirming" is to an important degree made possible because of the availability of "bomb proof" confessions. And as a consequence, there will often not be much left for the defense to do, other than to establish that the defendant is, after all, not such a bad person, and to generally establish extenuating circumstances. And accordingly, an important element of the trial becomes that of evaluating the person, "circumstances" and lifestyle of the offender.[10]

6. Retribution vs. rehabilitation, and signifying practices

Looking at the role of confessions of guilt in both the pre-trial and the trial part of criminal procedure, it becomes clear that this part of the procedure functions in such a way that people are likely, either voluntarily or through force, to throw themselves at the mercy of public prosecutors and judges. This way of surrendering to the authority of these officials, acknowledging what one did wrong, and recommitting to "official" standards of normality gives these proceedings the appearance of a rehabilitative measure in its own right. In this sense, these criminal proceedings can be said to reveal a rehabilitative outlook. They are, however, also a means to come to an appropriate disposition, a means that allows officials to *calculate* appropriate punishment in terms of levels of culpability (in terms of what punishment a person *deserves*, and can in this sense be characterized as retributive).

What is important to realize here, is that the system is very much premised on suspects and defendants confessing, and throwing themselves at the mercy of the authorities. So much so, in fact, that one can wonder to what extent a lenient sentence or disposition is still in reality a reward for compliance, based on discretionary judgment. Given that more than 90% of all offenders confess, the "going rates" and the guidelines referred to earlier, are in all likelihood the "going rates" and guidelines applied to the average, confessing and "remorseful" offender, whose sentence can be calculated using a computer. One could say that for such calculations, confessions of guilt are close to

being a "formal" requirement (as opposed to a requirement of "substance). A "formal" requirement for dealing with cases and offenders in an informal, yet, standardized way. This (relatively) formal importance of confessions of guilt is also illustrated by the fact that public prosecutors will resort to plea bargaining practices to get their confession, and in so doing realize the "image" of an offender's acquiescence to public prosecutors' authority, that is then rewarded with leniency. One could, therefore, argue that Japanese criminal justice is, in terms of its sentencing output and commitment to consistency, retribution-oriented, but also that it uses rehabilitative means, or at least rehabilitative *looking* means to realize this orientation.

And so, on a level of the actual practices of criminal justice, we have an answer to our initial question of how a commitment to consistency can be reconciled with what would seem to be a rehabilitation-oriented system. How, now, can we understand these practices in terms of what they "signify", and what do they tell us about the functioning of criminal law and legal rights in Japan?

Current prosecution and sentencing practices arguably convey that defendants who aren't "all bad" and know what is, in this situation, the right thing to do (to confess guilt and show remorse), may profit from the generosity of the state - which, in spite of the defendant's vices may give him/her a lenient (or suspended) sentence. And conversely, it will convey that those who do not submit to the state's authority will pay the price. In any case, trial proceedings will virtually always (in 99.9% of the cases) prove their own legitimacy - thanks to prosecutors, who will bring charges in only airtight cases.

Justice and punishment, here, are for the state to dispense. Even though experience shows that state officials are committed to consistency and uniformity in sentencing, their consistency (as well as leniency) is conditional on a total relinquishment of the rights to silence and against self-incrimination on the part of the (suspected) offender. While experience also shows that the state binds itself to certain rules, the unofficial character of the rules ensure that it becomes very hard for others to compel the state to follow the rules it has set itself.

By encouraging/forcing offenders to relinquish their rights, in their own best interests, the state (seemingly) rewards those who surrender themselves to its authority. This process of surrender allows for an assessment and evaluation, not only of citizens' criminal acts, but also of their lives and "who they are". In this way Japanese criminal justice takes on and fosters an emphatically paternalistic character, mirroring "intrusive and solicitous parental responses to children" (Morris 1994: 96; also see Foote 1992). As indicated, the surrender to state authority, and the appropriate remorse accompanying it, may be simply a matter of outward, "formal", and self-serving compliance. What is particularly significant for this discussion, though, is less that, or whether, individual offenders are dealt with in a specific paternalistic manner ("for their own good"), but rather that the system of criminal justice is operated, and that legal rules are used in a paternalistic manner.

One fundamental characteristic of legal rules is arguably that they acquire an objective existence, autonomous of the concrete situation in which they are used, binding the state and its citizens alike. The introduction of sentencing guidelines, and other sentencing "aiding tools", could be seen as an attempt to make sentencing practices, and state officials, more clearly subject to legal rules. It could also be interpreted in terms of an apparent distrust of discretionary decision-making processes, and a desire to ensure that the decisions of those involved in discretionary decision-making could nevertheless be evaluated in terms of discretion-structuring rules.

In Japan such public sentencing guidelines or aiding tools are *de jure* absent, in spite of strong indications of a *de facto* practical employment of guidelines and aiding tools. The state does take care to govern society and its citizens according to specific rules, but does so in such a way, that accountability towards these citizens, when it comes to the following of these rules, is minimized. This standardized way of employing unofficial rules, that by virtue of their unofficial nature remain "state property" (to be used for "society's/citizens' benefit"), could be interpreted as being part of a Japanese legal tradition. In the current situation in Japan one can see parallels between the way state officials in pre-Meiji Japan used the *Kujikata Osadamegaki*, an administrative manual of rules issued to administrators only, used for the ordering of society (Dean 1997, 65). One could, furthermore, interpret the vagueness of the rules on sentencing in terms of a traditional Japanese aversion for clear-cut, and especially, universally applicable (legal) rules (Kawashima 1979). The question here, of course, is whether current practices are indeed part of such a legal tradition or part of an invented one

which is very convenient in terms of criminal justice politics (or whether the answer will lie somewhere in the middle).

In May 2009 the *saiban'in* lay judge system was put into effect. With this new system, a judicial panel composed of six lay persons selected from those eligible to vote, and three professional judges will determine guilt as well as the appropriate sentence. It would seem that with the introduction of this system, the character of Japanese criminal justice is bound to change radically. As with the introduction of a jury the outcome of trials might no longer be as predictable as before, the conviction rate might go down. Criminal procedure might assume a more adversarial character and the control over proceedings, as it was "traditionally" exercised by public prosecutors, might diminish; as would perhaps the paternalistic character of proceedings.

How these matters will work out remains of course to be seen (the first trials in which the system will be put into practice are expected to take place in July). It is important to keep in mind, however, that public prosecutors will still determine in which cases they will or will not bring charges – and it seems unlikely that where they have up until now only prosecuted "air tight" cases, they would suddenly decide to prosecute less than air tight cases now (see Supreme Court Public Prosecutor's Office 2009: 2). Considering in addition the penal populist climate that has prevailed in Japan in recent years (form example see Hamai and Ellis 2006 and 2008; Miyazawa 2007 and 2008), as well as the more visible presence of victims of crime in court,[11] one may wonder just how critical lay judges are going to be towards the claims of public prosecutors. What effects the implementation of the lay judge system on sentencing (and other decision-making) practices and their significance will be, is of course a matter for future research.

Endnotes

[1] For example see Machin (2005) and references listed there; website of the Sentencing Guidelines Council http://www.sentencing-guidelines.gov.uk/index.html; Hutton 1995; Council of Europe 1993.

[2] One could arguably devote a series of articles to the different theories, or subtle differences between theories and opinions on sentencing, and in the end still not be all that wiser – if only because the connection between such sentencing theories and currents within these theories on one hand, and actual sentencing practices, is not clear. For one, because these theories were not necessarily created to be applied to actual sentencing practices. Nevertheless, the ideas of especially Harada, a judge of the Tokyo High Court, arguably give a good impression of the sentencing thought influencing actual sentencing practices (see in this regard also Ida 2004, 204-208).

[3] Significantly enough, when addressing the topic of sentencing standards, Dando starts with an explanation of article 248 of the Code of Criminal Procedure, which provides standards for the suspension of *prosecution*.

[4] When, for example, I examined the files of a murder case of a man who had murdered his wife and two children (Yokohama District Court, Heisei 6 (wa) No. 2381), there were 20 statements by the defendant (which in all likelihood took more than 20 sessions to make), good for a total of around 3000 pages, even though this defendant had in his first statement expressed how, when and why he had committed the crime. These confessions took the shape of a very thorough (and repetitive) evaluation of the defendant's crimes, motive, life and character.

[5] The literature on this subject has been known to paint a picture of cooperative suspects/defendants (Bailey, 1976; Haley, 1998, Tsuchimoto, 1996, etc.). It is of course hard to assess to what extent people *choose* to cooperate. What is clear, however, is that it is extremely hard for people to choose not to cooperate, and to persist in denying guilt. The legal rules are such (or at least applied in such a way) that people can be held in police cells for

weeks, virtually without contact with the outside world (as prosecutors can determine, if the investigation so requires, determine where, when and for how long the suspect/defendant can see his lawyer – Code of Criminal Procedure Art. 39.3 – see also: Igarashi, 1984, 1989; Nihon Bengoshi Rengōkai 1995; Hirata, 2002; Amnesty International Report 2009). Furthermore, those who do somehow manage to keep denying guilt, will often receive harsher treatment, as for these offenders public prosecutors will add a "denial tariff" (□□□) and demand a harsher sentence than they normally would (or prosecute, where they would normally suspend prosecution – see Johnson, 2002).

[6] See Ramseyer and Nakazato 1999, 181; Ōno 1992, 63; Haley 1991, 123), etc. For an alternative view, see Johnson 2002, 23-27.

[7] Johnson in fact argues that public prosecutors evaluate suspects, and their deserts and corrigibility, in terms of "sinisterness" of character. With regard to this sinisterness, they distinguish three basic categories (ideal types) of suspects: 1) bad people; 2) people headed for trouble, and 3) good people in trouble. The kind of punishment/treatment that they are deemed to deserve, then, is determined by combining considerations of character with considerations regarding the seriousness of the crime. As the "bad person" who commits a serious crime is perceived to be less correctable (that is why s/he is a bad person) than a "good person in trouble" who committed a similar serious crime, the way a case will be dealt with is (obviously) not going to be the same in both cases.

[8] The existence of ideal types of offenders (and in all likelihood also offences), and tracks corresponding with these types of offenders, make it probable that there are certain guidelines – either explicit, or implicit guidelines deducible from "generalized" daily practices of prosecution. These guidelines, however, remain unknown. In fact, it appears that public prosecutors in Japan prefer to keep their discretionary assessment as unpredictable as possible. When conducting his survey, Johnson did not get permission for questions about hypothetical cases, as prosecutors "feared (they said) two deleterious consequences: that the published results would encourage the calculators to take as many bites from the apple of leniency as the survey evidence seems to allow (…), and that the results would be interpreted as an official statement of procuracy policy which might give defense lawyers a new resource for arguing that indictments were unfair." (Johnson 2002, 108)

[9] See in regard these matters, e.g., Sendai District Court, Heisei 20 (wa) 707; Osaka District Court, Heisei 20(wa) 1028; Matsuyama District Court, Heisei 19 (wa) 390; Kobe District Court, Heisei 19 (wa) 868; Saitama District Court, Heisei 19 (wa) 1115; Wakayama District Court, Heisei 18 (wa) 126 and (wa) 265, etc., etc. Judgments accessible at: http://www.courts.go.jp/ (website of the Supreme Court of Japan). See also Harada 2004, 16.

[10] To give an example, again from the murder case referred to *supra*: the defence had called a number of witnesses who then told in court how that defendant had always been a warm, considerate, generous and generally helpful, as well as a hardworking person. Anecdotes were furthermore presented to illustrate these "facts" (e.g., how the defendant had picked up and taken care of an abandoned kitten, how he had helped his fellow classmates in junior high school to the point that he missed classes at the prep school he was going to, etc.). In addition, former classmates had gathered a number of signatures of people requesting a lenient sentence, while friends of his parents had also gathered such petitions (more than 3000 in total). These petitions started typically with a favourable description of the defendant's character, followed by a request for a lenient sentence.

The prosecution in turn introduced less favourable opinions about the sentence that the defendant should get, by asking the victim's mother and brother their opinion about the defendant as a person, and the penalty he should receive (both wanted him to get the death

penalty), and argued throughout the trial that the defendant was a cold-hearted, selfish man, who pursued only his own pleasures (demonstrated by his crimes, but also, e.g. by the way he had repeatedly cheated on his wife with different women).

[11] Pursuant to an amendment of the Code of Criminal Procedure, that was implemented on December 1st 2008, victims of certain serious crimes now have the right participate in criminal proceedings (sitting alongside the public prosecutor) , by e.g. questioning defendants and recommending a sentence (see also Sakamaki, 2008).

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- Saitama District Court, Heisei 19 (wa) 1115
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