The Curious Case of the Criminal Tattooist

Japanese Criminal Law in Action

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I. INTRODUCTION

In September 2017, Taiki Masuda was fined ¥150,000 by the Ōsaka District Court for the crime of conducting "medical practices" without a medical licence. Masuda is not some shady backstreet physician – the kind of person one might expect to fall afoul of a criminal offence such as this – but a professional tattoo artist, and the "medical practice" of which the indictment complained was the inking of consenting and paying adults in his apparently spotless studio. His conviction rests on a perverse construction of a law clearly intended not to regulate the tattoo industry but to prohibit quack doctoring, and the case exposes many unsavoury characteristics of Japanese law and its institutions.

II. THE RULING

The origins of this unedifying case lie in 2015, when the Ōsaka police launched a sudden and unprecedented assault on the prefecture's tattoo industry. While official harassment of tattoo artists is hardly novel in Japan, previous operations had focused on the small minority of practitioners who are integrated into Japanese organised crime, rather than independent commercial artists. This time, the police arrested dozens of self-employed tattooists, with most sentenced to fines in summary proceedings. Masuda was

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one of these, and was ordered to pay ¥300,000. Unlike the others, he chose to contest his guilt and have it decided at a full criminal trial in the District Court, hoping a favourable ruling would confirm the legitimacy of tattooing under Japanese law and thus protect the industry from further interference.

The putative legal basis for Masuda's arrest and prosecution was section 17 of the Medical Practitioners' Act 1948,[1] which forbids anyone other than a licensed medical practitioner from conducting "medical practices".[2] Unhelpfully, like much Occupation-era legislation, the 1948 Act is poorly drafted, and fails to define the medical practices that section 17 reserves for the attention of accredited medics. The authorities argued that "medical practices" included tattooing, while Masuda maintained that tattooing was not medical in its nature but artistic, and therefore outside the meaning of the statute, such that tattooing without a medical licence was not a criminal offence. The court – judge Nagase Takaaki presiding – convicted Masuda, endorsing the authorities' interpretation of the 1948 legislation.

III. THE ILLS OF JAPANESE CRIMINAL PROCEDURE

It is unsurprising that Masuda's defence failed. With Japan's rate of conviction at trial notoriously close to 100%, acquittal is a prospect so rare as to be essentially insignificant in an account of Japanese criminal law in practice: in Japan, one goes to court not to have one's guilt determined, but simply to have it officially recorded.[3] This striking phenomenon has received much scholarly attention and many explanations have been offered. The most compelling is that suggested by Ramseyer and Nakazato, who conclude that "Japanese conviction rates are high not because courts are railroading innocent defendants...[but] because prosecutors are freeing guilty defendants".[4] This in turn is "because they have too few resources to

1 医師法 Medical Practitioners' Act (Law No. 201 of 1948).

2 「医師でなければ、医業をなしてはならない。」

3 Recent reforms such as the much-discussed *saiban'in* (裁判員) system – not applicable anyway to Masuda's case – appear not to have dramatically affected the conviction rate at trial. Its biggest effect seems to have been on prosecutorial practice, which has changed perhaps in order specifically to *prevent* the new system affecting prosecutors' much-prized high conviction rate. Foote attributes the decline in indictments in categories of cases subject to *saiban'in* trial to prosecutors having "reduced the severity of charges to place cases outside the categories subject to the saiban'in system.": see D. H. FOOTE, Appraising the Saiban'in System, Michigan State International Law Review 22 (2014) 755, 765.

4 J. M. RAMSEYER / M. NAKAZATO, Japanese Law: An Economic Approach (Chicago 1999) 182.

prosecute any but the strongest cases."[5] Put like that, the Japanese situation actually sounds notably restrained and progressive, rather than authoritarian. But Masuda's case typifies the dark side of the regime this explanation describes. Although Ramseyer and Nakazato describe prosecutorial decision-making in fairly benign terms – suggesting that prosecutors prioritise by obviousness of guilt in sending to trial only "the most brutally and flagrantly guilty"[6] – prosecutors will in fact act more *rationally* (although far less ethically) if they prioritise instead directly by *anticipated prospect of conviction*.[7] This is a subtly different question from the obviousness of the defendant's guilt as a matter of fact and law, since factors unrelated to the objective strength of the case against a particular defendant can make his conviction more or less likely.

Although the facts in Masuda's case were undisputed, as a matter of strict law his guilt was highly uncertain – and remains so, notwithstanding the opinion of the District Court. This was the first time a Japanese court has been called on to interpret the scope of the statutory provision in question, and therefore to determine the legality of tattooing in Japan – that is, tattooing performed by anyone other than a licensed doctor. So, prior to the Court's own decision, the prosecutors' interpretation of section 17 was no more legally authoritative than Masuda's own, and for many reasons the prosecutors' contention that the 1948 Act applies to tattooing is implausible as a question of statutory construction. The statute's purpose is patently the regulation of medicine in the conventional sense, and the obvious purpose of section 17 is therefore to prevent the inadequately skilled from holding themselves out as doctors and performing the services for which people seek professional medical assistance. Moreover, the social stigma of tattooing and its synonymity with organised crime – a link stronger in the popular imagination in 1948 even than today – makes it absurd to impute to the legislators of 1948 an intention that henceforth the only recently decriminalised practice of tattooing[8] would be undertaken by upstanding members of the medical profession. For their part, the medical establishment in 1948 – and for that matter today – would likely resist the conflation of tattooing with the "medical practices" that comprise their own Hippocratic vocation.

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5 Ibid.

6 Ibid.

7 Probability of conviction (rather than obviousness of guilt *per se*) is the more strictly *rational* criterion for prosecutorial decision-making in that it is more likely to secure optimal compliance with the pressures and incentives to which the authors regard prosecutors as subject, namely that they are "evaluated on the basis of convictions" (ibid., 181), with serious professional sanctions after more than a few acquittals.

8 The 軽犯罪法 Minor Offences Act (Law No. 39 of 1948) replaced the prior legislation that designated tattooing a criminal misdemeanour.

Masuda's conviction therefore illustrates the dangerous consequences of Japan's near guarantee of a guilty verdict at trial and resulting system of *de facto* trial-by-prosecution; because that courts rely so intimately on the prosecutorial convention of pursuing only open-and-shut cases, the fact that a case has been brought to trial at all inclines judges to a favourable conclusion of its strength.[9] The result is that, even when the defendant has the temerity to deny the charges against him, the trial is little more than judicial ratification of a prosecutor's prior conclusions about fact and law,[10] a situation transparently vulnerable to official abuse. If it is true that prosecutors proceed only when certain of conviction, then their decision to indict Masuda despite the legal vulnerability of their case against him suggests a troubling degree of prosecutorial confidence that the court would endorse their – strained – interpretation of the law. Masuda's case forces us to ponder whether – perhaps when pressured to convict a particular troublemaker or establish a useful legal precedent – prosecutors rely on the court's habit of rubber-stamping their own conclusions, knowing that the court willoverlook the cracks that rigorous legal analysis would expose in their case.

IV. LAW AND ADMINISTRATION

One factor in Masuda's case might partially excuse the prosecution's certainty of success, but it is one that reflects unflatteringly on broader Japanese law, and particularly the status of the judiciary as upholders of the rule of law. The prosecutors' position – and the judgment of the court – relied heavily on guidance issued by the Ministry of Health, Labour and Welfare in 2001. This pronouncement purported to "clarify" the scope of the Medical Practitioners' Act, and classified "inserting pigment into the skin using a

9 This is of more practical importance than the statutory presumption of innocence at trial established by section 336 of the 刑事訴訟法 Code of Criminal Procedure (Law No. 131 of 1948).

10 Even if particularly self-aware judges realise this tendency, they can become trapped in a cycle of "certainty-inflation" in trying to counteract it: judges start "thinking (or feeling) that if a defendant has been charged then he is probably guilty...[but are also moved] to expand the meaning of "reasonable doubt" so as to counteract the risk of a pro-prosecution lean. As judges increase the quantum of evidence required to reach conviction, prosecutors respond accordingly – by increasing the quantum of evidence required to indict. Fewer "gray" cases get charged, the conviction rate climbs higher, acquittals become even more newsworthy, prosecutors grow more prudent, and the causal circle accelerates.": D. T. JOHNSON, Criminal Justice in Japan, in: Foote (ed.), Law in Japan: A Turning Point (Seattle 2007) 347–348.

needle" as a medical practice within the meaning of the 1948 legislation.[11] The court's reliance on this guidance is an instructive example of the complex relationship the courts recognise between statute law and the myriad of interpretive and regulatory notices emanating from the Japanese state bureaucracy. This case is particularly revealing since, in an important 2014 decision, the Supreme Court itself reiterated powerfully that administrative communications and pronouncements cannot affect the meaning or content of positive law.[12] In that case, Japan's highest court ruled that a foreign resident in Japan could not seek judicial review of her local authority's decision to deny her social welfare, because her eligibility for such payments had no basis in law. The relevant statute permitted payments only to Japanese citizens,[13] and the claimant was eligible for consideration only thanks to a ministry directive that foreigners should be awarded welfare payments on an equal footing with Japanese nationals. The Supreme Court emphatically distinguished between law and mere administrative practice or guidance, insisting – correctly – that the latter could in no way affect the substance or meaning of formal law. The claimant's right to consideration therefore had no basis *in law* and could not support an application for judicial review, which requires a "legal interest" in the challenged decision.[14] Masuda's case suggests the following refinement: while Japanese courts distinguish rigidly between law and merely administrative material when this will insulate the state from liability or review (as in the 2014 Supreme

11 「針先に色素をつけながら、皮膚の表面に墨等の色素を入れる行為は「医療行為」にあたります。そのため、医師免許を持たずに入れ墨やタトゥーを入れるのは、「医師でなければ、医業をなしてはならない」と定めた医師法 17 条に違反するのです。」 Interestingly, even this guidance was apparently aimed principally not at conventional tattooing but at regulating the emerging market in permanent makeup; the directive's title is「医師免許を有しない者による脱毛行為等の取扱いについて」("Concerning the conducting of hair removal, etc. by persons not in possession of a medical licence"). Since the guidance was concerned principally with invasive new cosmetic procedures, it omitted practices one might consider analytically analogous to tattooing, such as body piercing, but included laser hair removal and chemical skin peels as "medical practices" reserved for licenced medical professionals.

12 J. C. FISHER, We the *kokumin*: the Constitution, International Law and the Rights of Foreigners in Japan, ZJapanR/J.Japan.L. 39 (2015) 109, 113-5. The decision is available in English translation at The Japan Times News, "Ruling hinged on assistance law revamp: summary", (25 July 2014): *http://www.japantimes.co.jp/news/2014/07/25/national/crime-legal/ruling-hinged-on-assistance-law-revamp-summary/*.

13 生活保護法 Public Assistance Act (Law No. 144 of 1950), section 2.

14 行政事件訴訟法 Administrative Litigation Act (Law No. 139 of 1969, as amended by Law No. 109 of 2007), section 9(1).

Court decision), they will blur the distinction when administrative material supports the authorities' preferred interpretation of the law itself.

V. THE (IR)RELEVANCE OF THE CONSTITUTION

Masuda also invoked provisions of the Constitution to resist the prosecutors' contention that the 1948 Act required tattoo artists to be licensed doctors. Predictably, these submissions fell on deaf ears, with the court rejecting each of Masuda's Constitutional contentions. Masuda had submitted that tattooing was a form of expression protected under Article 21. However, the court – on this point not wholly illogically – concluded that freedom of expression did not protect the act of tattooing others, so this provision was not relevant to the law's regulation of tattooing.[15] Moreover the court denied that requiring tattooists to hold a medical licence violated Article 22's guarantee of the right to choose one's profession, because that right is necessarily subject to public welfare considerations. The court thought medical qualifications "indispensable in order sufficiently to understand the dangers" inherent in tattooing. For the same reason, it denied any violation of Article 13 (which protects the right to life, liberty, and the pursuit of happiness).

In short, the prosecutors may have been justly confident about a conviction in Masuda's case. Although as a matter of strict law his guilt was highly unclear, individuals barely ever succeed in overcoming the authorities' interpretation of the law, especially when the authorities find support in edicts of the state bureaucracy, and when the defendant's primary grounds of resistance is invocation of Japan's toothless Constitution. The decision demonstrates how the conventional hierarchy among sources of law – conceived typically as a pyramid crowned with a supreme Constitution, to which all below it is subject and valid only if compliant with the mandatory rules in the Constitution itself – is functionally inverted as a matter of legal reality in Japan. The Constitution typically matters only in so far as not displaced by some provision in primary legislation, which itself will yield under pressure from some administrative instrument, whether in the form of secondary legislation or even notionally non-legal bureaucratic pronouncements.

The Ōsaka court therefore reasoned characteristically of Japan's judicial branch, and it would be unfair to attribute the case's many juristic flaws to the individuals concerned. Conservative though Japan's judges generally

15 The court implied *(obiter)* that *being tattooed* itself might be an aspect of self-expression to which section 21 would in principle apply.

are,[16] the decision cannot be attributed to anything as decision cannot be attributed to anything as simple as conservative judges' personal hostility to tattooing. It is the result of a far more systemic problem, namely the judiciary's collective reticence to enforce the principle of government subject to law. In partial defence of the Ōsaka court, its verdict was more lenient than it might have been, ordering Masuda to pay ¥150,000, half the ¥300,000 originally demanded in summary proceedings. The court offered no direct explanation for this reduction, but its judgment elsewhere emphasised Masuda's sterling efforts to promote the hygiene of his premises and equipment, and for want of any other explanation this seems the probable cause of the court's leniency. [17] However, reducing liability for this reason exposes as absurd the court's prior insistence that *only* a medically qualified individual could possibly understand and counteract the risks of infection involved in tattooing.

VI. The impact for tattooing in Japan

It is worth turning from the case's general importance to its impact for the issue at hand: the practice of tattooing and its place in Japanese society. Mikami Takeshi, lawyer for Masuda's "Save Tattooing in Japan" campaign group,[18] predicted that this trial would "decide whether the art of tattooing can continue in Japan".[19] This is hyperbolic. The decision does not inevitably mean the immanent death of Japanese tattooing. For one thing, Japan lacks a formal doctrine of precedent, and even its unofficial equivalent attaches little weight to the decision of a lowly District Court. Future courts remain in principle free to reach different, and legally sounder, conclusions on the same question. But even if the illegality of tattooing were conclusively confirmed, that would not mean that the industry would altogether disappear, nor even that police intervention would necessarily intensify. Even when activities are criminalised for being immoral or socially corrosive, the Japanese authorities typically do not attempt the difficult task of their outright elimination, but instead tolerate a self-regulated underground industry, provided its denizens respect the unspoken division between their

16 The dominance of right wing thought in the Japanese judiciary is well-attested: see e.g. David S. Law, "Anatomy of a conservative court: judicial review in Japan" (2008) 87 Texas Law Review 1545.

17 More cynical interpretations are also possible, such as that the court thought a show of leniency would dissuade this proven troublemaker from appealing their decision.

18 *http://savetattooing.org/*.

19 Financial Times, "Japan's crackdown on tattoos sparks legal battle" (16 December 2016), *https://www.ft.com/content/cbdabcce-c340-11e6-9bca-2b93a6856354*.

world and that of Polite Society. Even if tattooing is illegal, what matters in practice is public officials' willingness to tolerate its continuation.

Specific local factors precipitated the Ōsakan police crackdown that led to Masuda's prosecution. The city mayor at the time, Hashimoto Tōru, became notorious during his tenure for his personal vendetta against inked skin – perhaps over-compensation for his own family's well-documented *yakuza* roots. In 2012, Hashimoto – the same authoritarian nationalist that famously legislated to force schoolteachers to stand for and sing the national anthem – even tried to force the city's more than 30,000 public employees to declare their "tattoo status" as a matter of public record,[20] suggesting that those with tattoos would be expected to resign. But with the additional foreign scrutiny associated with the 2020 Olympics, more prudent officials will be slow to replicate Ōsaka's harassment of the tattoo industry. Indeed, the authorities are already aware of how embarrassing it will be for tattooed foreign spectators – not to mention Olympians themselves – to suffer the widespread discrimination that excludes tattooed people in Japan from otherwise public facilities. This has led to pressure on the industries most responsible, particularly hot springs, gyms, sports facilities and even public beaches, to relax the traditionally firm exclusion of those with tattoos.

Increased tolerance towards bearers of tattoos in Japan is long overdue, and old prejudices – concentrated particularly among older people – are increasingly out of sync with the reality of tattoo culture in contemporary Japan. The long-standing embargo on tattooed people from the above facilities is supposed to show their refusal to tolerate criminal clientele: such is the enduring synonymity between body art and criminality in the minds of certain influential sections of Japanese society. But this overlooks significant changes in who is actually getting tattooed, and why, in Japan today. For decades, the practice has been in rapid decline among habitual criminals, precisely because sporting what many see as an overt declaration of criminality is a professional liability for those who hope to commit crimes and get away with them.[21] Tattoos are instead becoming the preserve of the counter-cultural Japanese youth, and body art is as likely to be spotted in Harajuku or Shimokitazawa as in Ikebukuro or Kabukicho.

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20 The survey was allegedly prompted by complaints made against one social welfare officer, who allegedly intimidated children by deliberately revealing his tattoos.

21 The *yakuza*'s characteristic practice of punishing errors by finger-amputation is in decline for the same reason.

VII. THE CASE AGAINST THE CASE AGAINST TATTOOS

Requiring tattoo artists to be medically licensed is a regulatory threshold so unreasonably severe as to be tantamount to the outright prohibition of the tattoo industry. This is, of course, precisely the point, notwithstanding the authorities' invocation of public health concerns. Harassment of the tattoo industry has nothing to do with ensuring tattooing is done cleanly and competently, and everything to do with suppressing the practice as far as possible. This is because tattooing offends the sensibilities of conservative Japanese society. It is still widely considered intrinsically delinquent, or at least non-conformist – two things that, in the minds of Japan's reactionary gerontocracy, mean much the same thing.

But while the dominant opinion of tattooing is myopic, outdated and infuriating, foreign tattoo lovers keen to show solidarity with the Japanese industry are often equally selective in their accounts of Japanese tattoo culture. Appealing to the long history of Japanese tattooing and its intimate connection with iconic art forms such as woodblock printing, certain foreign voices condescendingly present Japan as having "lost its way" by forsaking this aspect of its artistic heritage. It is clear that tattooing has been performed in the Japanese islands for many centuries, and that in Tokugawa Japan it developed alongside other – more celebrated – forms of visual art. Nonetheless, tattoos have been less than respectable throughout Japan's modern history. It has always been a grungily proletarian practice,[22] historically flourishing among those with dangerous, dirty and generally unenviable livelihoods such as construction labourers, firemen and palanquin-bearers. This characteristically working-class art form was scorned by more refined sections of Japanese society, due to local factors like Confucian ethics – which condemned body modification as an affront to the natural order – and universal ones, namely snobbery and the vilification of working class practices by the socially privileged. When the Meiji authorities eventually banned tattooing – ironically, in order to conform to European values[23] – criminals necessarily became the sole practitioners of this artistic tradition. Tattooing in Japan has, for ages, been a reliable sign of

22 The Asahi Shimbun reported that the Hashimoto's survey among public sector workers in Ōsaka revealed around 100 workers had visible tattoos, with a dozen reporting tattoos not usually visible under clothing (although, since apparently there were no checks, one suspects a high degree of under-reporting when it comes to concealed tattoos). The vast majority of these were "bluecollar" employees involved with public transport and waste management.

23 The same 1872 ordinance banned mixed bathhouses, and the sale of shunga erotic prints.

one's membership of a social underclass with whom respectable citizens would not condescend to associate.[24]

And it is the fact that Japan's hostility to tattooing is so intimately bound up with class dynamics that founds the most powerful case for their greater acceptance. Increasing the profile and legitimacy of Japanese tattoo culture is part of dismantling an intolerant, classist hegemony, which seeks to exclude from the public forum any competing systems of values, aesthetics and identity. People like Masuda are defending the right to a countercultural identity, in defiance of pressure – particularly strong in Japanese society – that demands conformity of behaviour and subscription to a mandatory set of universal values. Ensuring the lawfulness – and *appropriate* regulation – of tattooing in Japan is necessary to nurture the emancipatory potential of practices that reject Japan's conformist social norms, norms that are themselves calculated to marginalise social conflict and thus protect the current distribution of social power from challenge.[25]

As Masuda has emphasised in foreign and domestic media interviews, there is far more at stake here than just tattooing. Tattoos are a battleground for competing visions of Japanese society, visions that disagree markedly about the value of individual liberty and diversity of thought and behaviour. Masuda's case has shown the Japanese state at its most puerile and illiberal, revealing its prejudice, paranoia and hostility to those who do not conform to received assumptions about how Japanese people should look, act, and indeed think. No arm of the Japanese state emerges from the litigation with its dignity improved. The story is one of local law enforcement engaged in pointless harassment of a creative industry for reasons of populist moralism, prosecutors dangerously confident in their influence over the judicial process, and a judiciary unwilling or unable to uphold the integrity of the law against the designs of other civic powers.

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24 There are occasional interesting exceptions. Koizumi Matajiro (nicknamed いれずみ大臣, "the tattooed minister"), grandsire of Japanese Prime Minister Koizumi Junichiro, had a long and distinguished career in the legislature and Cabinet despite an upper body dominated by a resplendent red dragon, the result of his own thoroughly working-class origins.

25 On the construction of Japanese norms of consensus and conformity, see e.g. H. BEFU, Critique of the Group Model of Japanese Society, in: Mouer/Sugimoto (eds.), Japanese Society: Reappraisals and New Directions (special issue of (1980) 5-6 Social Analysis); F. K. UPHAM, Weak Legal Consciousness as Invented Tradition, in: Vlastos (ed.), Mirror of Modernity: Invented Traditions of Modern Japan (Berkeley 1998); A. STOCKWIN, Japanese politics: mainstream or exotic?, in: Kingston (ed.), Critical Issues in Contemporary Japan (Abingdon 2014) 14.

VIII. WAYS FORWARD?

Masuda intends to appeal. If he does, he is likely to lose. But even if he miraculously achieved that most elusive of prizes – a victory against the Japanese state in its famously facilitative Supreme Court – confirmation of the legality of professional tattooing is alone inadequate to change the status of tattooing in Japanese society. In so far as litigation can make any contribution to that goal, a better approach might be a private law challenge to one of the many acts of discrimination faced by those sporting tattoos in Japan. If a tort claim were brought,[26] for instance against a hot spring refusing entry to a tattooed customer, liability would depend on judicial opinions as to whether the refusal was consistent with accepted (and acceptable) social norms. In applying this open-textured, largely discretionary test, a court would have to critically evaluate and balance social values, possibly including Constitutional principles like freedom of expression – which even the Ōsaka court suggested would be relevant to the *bearing* of tattoos, even if not to tattooing other people. It is not altogether novel for the courts to examine Constitutional values in defining the duties individuals owe each other as a matter of private law, even if they are reticent to invoke its provisions against organs of state. If such a case were brought, it is particularly important that the litigant should be Japanese.[27] With a foreign litigant, it would be hard to differentiate the issue of discriminating against a person with tattoos from the issue of discriminating against a foreigner with tattoos. The important point is to isolate and test the presence of body art *per se* as grounds for discriminatory treatment. More symbolically too, it is vital that the process of vindicating and reclaiming Japanese tattoo culture should be a thoroughly Japanese enterprise.

SUMMARY

This short comment describes and critiques the recent decision of the Ōsaka District Court against tattoo artist Taiki Masuda, convicted of conducting "medical practices" without a medical licence, contrary to section 17 of the Medical Practitioners' Act 1948. The decision is an instructive – and

26 Under 民法 Civil Code (Law No. 89 of 1896, as amended), Article 709.

27 This is true even though the discrimination is particularly galling in cases involving certain types of foreign nationals. For instance, in 2013, indigenous New Zealander *Erana Te Haeata Brewerton* was refused entry into a Hokkaido hot spring because of her traditional Maori tattoos. Proprietors defended this on the basis that clientele would be unable to contextualise her tattoos and distinguish them from those many assume indicative of affiliation with Japanese organised crime.

unedifying – example of Japanese prosecutorial practice and judicial reasoning at work, which undermines many scholarly attempts to defend or rehabilitate the characteristic features of Japanese law and legal procedure, especially in the criminal sphere. Particularly, the decision exhibits a perverse construction of the statutory provision in question, a failure adequately to distinguish between positive law and merely administrative material, and an overall lack of juristic rigour. This comment goes on to locate the issue of Japanese tattooing—and the official harassment of it – in its social context, applauding the defendant Masuda's defence of this counter-cultural practice.

ZUSAMMENFASSUNG

Die kritische Kommentierung stellt eine aktuelle Entscheidung des Distriktgerichtes Ōsaka vor, die gegen den Tätowierungskünstler Taiki Masuda erging, in welcher dieser wegen der Ausübung „ärztlicher Praktiken" ohne medizinische Zulassung verurteilt wurde. Die Entscheidung ist anschauliches – wenn auch unerfreuliches – Beispiel für die japanische Praxis der Strafverfolgung und der gerichtlichen Argumentation, welche Versuche aus der Rechtswissenschaft untergraben, Charakteristika des japanischen Rechts und des rechtlichen Verfahrens, insbesondere im Bereich des Strafrechts, zu verteidigen oder zu rehabilitieren. Sie offenbart vor allem eine pervertierte Interpretation der betreffenden gesetzlichen Vorschrift, ein Versagen, angemessen zwischen gesetztem Recht und bloßen Verwaltungsmaterialien zu differenzieren, und ein generelles Fehlen juristischer Präzision. Die vorliegende Kommentierung verortet das Phänomen der Tätowierungen in Japan – und die damit verbundenen Schikanen von offizieller Seite – in seinem sozialen Kontext und begrüßt die Verteidigung des Angeklagten gegen diese antikulturelle Praxis.

(Die Redaktion)