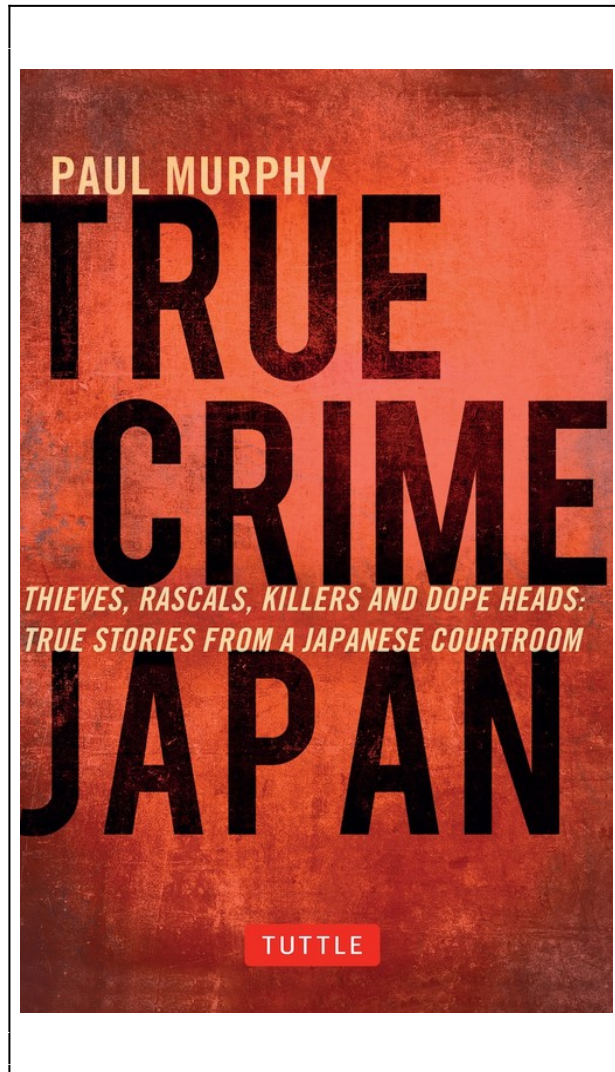


Late in Life: Japan's Elderly Behind Bars

Paul Murphy



Introduction

One of the most striking developments in Japanese criminality over the last two decades has been the rise in the number of elderly offenders. Thousands of elderly people who have led hardworking, respectable lives unblemished by criminal wrongdoing have become repeat criminal offenders after they retire.

Overall crime by the over-65s is more than six times higher than it was in 1992, assaults have rocketed 50-fold in the same period, albeit from a very low base, and, by 2011, crime by the over 65s exceeded crime committed by those in their 20s. Murder by the aged has risen at a time when the nation's overall homicide rate has fallen. But most of the rise in elderly criminality has been plain old theft. Police figures show that different forms of theft accounted for 86 percent of all non-traffic-related crime by the elderly in 2011. Because aged shoplifters tend to steal food more than any other item it is easy to conclude that poverty drives such crime. But there is also evidence to show that some elderly offenders are not poor but are choosing to steal rather than dip into hard-earned nest eggs. In other words they are choosing to steal not because they are poor today but because they may be poor tomorrow.

Whatever the reasons, the response of the courts has been predictable and unimaginative. Japan may enjoy an image as a society that is reverential toward the aged but repeat offenders are jailed regardless of age. Japan's rate of incarceration for the elderly is over three times higher than that of England and Wales. While fewer than 4 percent of English and Welsh prisoners were over age 60 in 2013, in Japan the figure was 18 percent.

In this extract from his new book, *True Crime Japan*, Paul Murphy puts a human face on this growing legal and social issue. A journalist and long-time resident of Japan, Murphy spent a year in the courts of Matsumoto City, Nagano Prefecture, recording the events there. "Japanese prisons are no place for those in the

twilight of their lives,” he says. Yet, many more elderly people will go to prison before the system is reformed.

Matsumoto Yoshimatsu was a latecomer to crime. At 74, he was facing prison for the second time in his life. Charged with theft, he was led by two prison guards into Matsumoto City’s Summary Court in Nagano Prefecture, handcuffed and on a leash. One prison guard walked in front and another behind, holding the blue rope that wrapped around the old man’s waist and connected to his handcuffs.

Moments before the judge arrived in the courtroom, Mr. Matsumoto was released from his handcuffs. He had been in detention since he was arrested for stealing from a megastore called Cainz three months earlier. The retired factory worker had first been caught thieving when he was 69 years old. That crime was dealt with out of court. Then he was caught again and given a suspended jail sentence, meaning he didn’t have to serve time if he behaved well. But he didn’t behave well. Soon after, he was caught stealing a digital camera. That landed him a prison sentence. This was his fourth offense, and another spell in jail was a near certainty. In a country where people generally age well, Mr. Matsumoto’s slouched shoulders, bushy gray eyebrows, balding head, and dowdy tracksuit made him look older than he was. While defendants in Japanese courts typically appear anxious or keep their heads bowed and eyes closed in shame or contemplation, Mr. Matsumoto stared ahead, expressionless. He was before the Summary Court, which deals with low-level offences—mainly theft—because he had stolen weed killer, as well as something that few under-60s would have any use for—blank cassette tapes.

He took the witness stand, shadowed again by his guards, who appeared ready to pounce should the shuffling septuagenarian make a break for it. So why cassette tapes? Mr. Matsumoto explained to the judge that he liked

to listen to enka, a traditional style of ballad singing popular with older generations in Japan. He had four cassette players in different rooms in his house, and wanted the tapes to copy music by famous enka singer Tabata Yoshio, a former steelworker who had first made a name for himself singing sugar-coated patriotic anthems such as the 1941 hit *Ume to Heitai* (The plum and the soldier). Perhaps Mr. Matsumoto was feeling nostalgic when he stole the tapes: Mr. Tabata had died of pneumonia aged 94, a month before the crime.

Mr. Matsumoto took the tapes and containers of weed killer concentrate from Cainz, a chain that sells everything from bicycles to beer from rice cookers to kabutomushi (large horned beetles that Japanese children keep as pets). When a store worker apprehended him in the car park, Mr. Matsumoto had seven containers of weed killer in his rucksack. He admitted to police that he had also stolen the same brand of herbicide on a previous occasion, all for the patch of land in front of his wooden house measuring only about 15 square yards. Half a container would have been more than ample.

“Why did you steal so much weed killer?” his defense lawyer asked. “Were you sowing rice?”

“No.”

“Did you not know that you are supposed to dilute it with water?”

“I only heard that later.”

“Were there no instructions (on the label)?”

“The writing was very small, I couldn’t see it.” That was an unlikely excuse. Perhaps Mr. Matsumoto didn’t want to admit that he was stealing something that he didn’t have any use for. He was all alone in court; over the four hearings it took for his case to be completed, not a single relative or friend came to show him they cared. He was once married and has two adult children, but they were nowhere to be

seen.

“Why did you get divorced?” his lawyer asked.

“She wanted to get divorced.”

“Did she give a reason?”

“Nothing special.”

He couldn't remember the last time he had seen his children, but said he had probably met his youngest son about ten years before. Asked why they didn't meet, Mr. Matsumoto told the judge that the son was married. “He's busy,” he said. He didn't seem to be deliberately trying to paint a picture of a pathetic life. He told the judge that he had friends who sang karaoke with him. But during his months of pre-trial detention, nobody made the 15-mile trip from the hamlet of Ono, where Mr. Matsumoto is from, to the detention center in Matsumoto City where he was being held until his trial concluded. It wasn't as if his friends or neighbors were ignorant of his troubles. They all seemed to know about his recently acquired penchant for shoplifting and his arrest. One of them told me that it had been rumored in the area that he had been going to the Cainz store on shoplifting trips even before he was caught in the act. Nonetheless, if a handful of conversations with neighbors are any barometer, Mr. Matsumoto was apparently still liked, albeit pitied, in the area.

The absence of relatives willing to attend the trial as a show of support or, even better, to testify as character witnesses, was a bad sign. Judges like to see a parent, a sibling, even a child testifying for the defense. Failing that, an employer or a family friend will do as a poor second-best.

Character witnesses, especially if they are family, are usually not there to paint a pleasing portrait of the defendant. In fact, family witnesses often take the opportunity to criticize him (defendants are usually male), telling the

judge of the shame that has been brought on the family, and, in the case of recidivists, how they have been a constant burden. Sometimes the testimony is tearful, sometimes stonily bitter. Rarely does a family member on the witness stand draw attention to an attractive feature of the defendant's character. They invariably apologize to the court for the trouble their relative has caused, typically bowing deeply to the judge before and after their testimony, and often bowing to the prosecutor as well. Not infrequently, the relative will also give another deep bow to whoever happens to be in the public gallery, apologizing for the bother that their family member has caused. Those bows are usually about 70 to 90 degrees, to show profound humility and apology—significantly more than the 15- to 30-degree bow that is used in formal greetings and farewells.

It is one of the curiosities of the Japanese courtroom that everyone gets to pick on the defendant. It's not just the family member, who, after all, may have more reason to feel aggrieved than even the victim. With fewer than one in 10 cases contested, the most belligerent questioning often comes not from the prosecutor or the judge, but from the defense lawyer, whose tone of questioning is sometimes condescending, often accusatory, and, on occasion, even downright angry.

In the following cross-examination, a defense lawyer in Matsumoto District Court lambasted his client, a thief and embezzler, for not showing sufficient remorse. “I'm at a loss for words when I look at all you did...When I listen to you I feel uneasy...You need to think long and hard about what you've done instead of just standing there speaking as if you've done nothing wrong. Can't you show some remorse? What you have done is terrible.” Indeed, it is far more unusual to see a prosecutor aggressively questioning a defendant than it is to see a defense lawyer getting snappy with his client on the witness stand. When the

defendant pleads guilty—as around 91 percent have done in recent years, according to official statistics—the defense lawyer, whose questioning generally comes first, cross-examines the witness to establish the facts of the crime and the motive, and to elicit words of remorse from the defendant and pledges that he will not do it again. There is usually not very much for the prosecutor to do once the defense lawyer has finished cross-examining. The expressionless demeanor of Matsumoto Yoshimatsu, the cassette-tape and weed-killer thief, didn't convey much of a sense of guilt, but he did say in words how sorry he was.

“Do you know it's bad to steal?” his lawyer asked.

“Yes.”

“Is it bad enough to go to jail?”

Mr. Matsumoto nodded.

“Is it worse to punch someone or to shoplift?”

“Shoplift.”

“Is it worse to stab someone or to shoplift?”

“Shoplift.”

“What about murder?”

“Murder is worse.”

Anything that indicates a lack of remorse, such as a not-guilty plea, is frowned upon by judges. That is true of any country, but even more so in Japan. Very rarely does a defense lawyer put up any kind of a robust defense.

The University of Hawaii's David Johnson, wrote in his book *The Japanese Way of Justice* that in some cases the defense arguments are so “perfunctory” and “incomplete” that “if judged by American standards they could constitute malpractice.” Johnson also pointed out, however, that by the time a defendant is

put on trial, the police and prosecutors have done their job. Cases with uncertain evidence are rarely prosecuted. Often, Johnson wrote, “there is little even the most zealous, skilled attorneys can do except try to mitigate the severity of the sentence.”

Official statistics back up the conclusion that only the most rock-solid cases typically make it to court. In 2011, only 10 of 8,626 defendants appearing before Japan's summary courts—which, as mentioned previously, handle mainly minor theft cases—were judged not guilty: in other words, just one in 862 defendants. At that rate, the judge at Matsumoto Summary Court who delivered judgment on 69 cases in 2013 (all guilty) will deliver a not-guilty verdict every 12 years.

For those defendants who appear before a district court, which deals with most crime ranging from theft to murder, the chance of a not-guilty verdict is slightly higher, but still remote. In 2011, just one defendant in 723 throughout Japan was fortunate enough to be found not guilty. In 2013, Matsumoto District Court judges found one person not guilty (in a theft case) out of 163 judgments delivered. Accordingly, by the law of averages, a not-guilty verdict at Matsumoto District Court occurs roughly every four or five years.

Cases with an uncertain chance of conviction usually never reach court. In 2011, of the 291,000 suspects accused of non-traffic penal code offenses, which include murder, theft, arson, assault, and most other serious criminal offenses, only one in 12 ended up in prison. About one in three suspects were under the age of 20 and therefore had their cases referred to courts handling juvenile cases, where detention is used as a very last resort. A further 8 percent were dealt with by a so-called summary order, which meant a fine. Another 15 percent were not prosecuted due to lack of evidence or other reasons. About one in four had their prosecutions suspended. (The power to

suspend a prosecution is given under the catchall Article 248 of Japan's Code of Criminal Procedure, which states: "Where prosecution is deemed unnecessary owing to the character, age, environment, gravity of the offense, circumstances, or situation after the offense, prosecution need not be instituted." Most of the remainder of the 291,000 suspects were sent to trial, but received suspended prison sentences.

The prosecutorial unwillingness to bring cases to court unless they are sure of a conviction has at least one unfortunate side-effect. A defendant's right to be presumed innocent is undermined by the generally held assumption that if his case has made it to court then he is guilty. According to Matsumoto-based lawyer Ozawa Susumu, "Prosecutors only take cases where they are sure of a guilty verdict, so that leads to a situation where judges may think that because the prosecutors have taken the case, it must be correct. Judges and prosecutors are bureaucrats; they have a natural affinity with each other. If the prosecutor does his job properly—which 99 percent of them do—it works well. But mistakes happen, and in Japan, if a prosecutor is out of control, the system is like a truck with no brakes: there is nothing to stop it until it hits a wall." Around Japan, in recent times there have been several high-profile miscarriages of justice, usually involving coerced confessions. In one such case Hakamada Iwao was released by Shizuoka District Court pending a retrial in 2014 at age 78. He had spent 48 years in jail (34 of them on death row) for murdering a family of four in August 1966. The former professional boxer was freed after DNA tests revealed that blood on items of clothing that the murderer was believed to have worn was not his. Such DNA testing didn't exist at the time he was convicted, but it shouldn't have been needed, as there were other issues that should have cast reasonable doubt over Mr. Hakamada's confession. The clothing, for example, included bloodstained pants which were too small for him. Also, while he had

admitted to the murder during intense interrogation, he retracted his confession in court.

Unlike Mr Hakamada, Matsumoto Yoshimatsu had clearly committed the theft of weedkiller and cassette tapes that he was charged with. But was he guilty? His lawyer entered a not-guilty plea on the basis that he was senile and therefore not criminally responsible. If the judge accepted that he was senile, then Mr. Matsumoto would walk free.

"Do you forget a lot?" the lawyer asked.

"Yes."

"How much savings do you have?"

"I can't remember."

"Did you ever go to jail before?"

"Yes."

"Which jail? Do you remember?"

"No."

"I am going to ask about vegetables. Say the names of 10 vegetables."

"Tomato, beans, eggplant," replied Mr. Matsumoto, adding one other that was inaudible.

"Where are you?"

"In court."

"Whose court?"

"My court."

"Take seven from 100."

"93."

"Take another seven off."

"86."

Answered quickly and correctly, things weren't going so well.

"Say 286 in reverse."

"682."

So far, so bad. Mr. Matsumoto's mental faculties were holding up reasonably well apart from his failure to name 10 vegetables and recall which prison he was in previously. The defense of senility was looking weak.

"Say 9253 in reverse."

"9368." Finally, Mr. Matsumoto had really fluffed it. But it was too late. He came across as somewhat dodderly, but not at all mentally incapable. Later, the prosecutor read from letters by psychiatrists who had assessed Mr. Matsumoto's mental health and judged that he was capable of deciding right from wrong and wasn't senile.

The judge asked Mr. Matsumoto about his life.

"Who makes your food?"

"I make it."

"For example?"

"Curry with rice."

"Do you buy the vegetables?"

"Yes."

"And you cut them?"

"Yes."

"What do you do about taking a bath?" the judge asked. (The question is not as odd as it sounds: government figures from 2008 show that 4.5 percent of Japanese dwellings had no bathroom, one of the reasons for the ongoing,

though declining, popularity of public bathhouses known as sento. A greater number of homes have no indoor toilets. OECD figures released in 2014 show that 6.4 percent of homes have no indoor flush toilet, compared to 0.1 percent in the United States and 0.3 percent in the United Kingdom).

"I have a bath at home."

"Do you use it?"

"Yes."

"Do you have any difficulty looking after yourself?"

"No."

"Do you have home help?"

"No."

"You do everything?"

"Yes."

"When you return to society, where will you live?"

"At home."

Here again, the answers given by Mr. Matsumoto showed a man who was capable of performing everyday tasks. He was never going to be one of the lucky few to win a not-guilty verdict. Once his senility defense faltered, his fate was sealed. Though the value of goods stolen may have been small, amounting to just 5,698 yen (US\$57), he is part of a worrying trend emerging in Japanese society. There are thousands of elderly men and women like Mr. Matsumoto who have led hardworking, respectable lives unblemished by criminal wrongdoing, but who become repeat criminal offenders after they retire.

Pensioner crime wave

A Ministry of Justice White paper on crime in 2012 said that overall crime by those over age 65 was 6.3 times higher in 2011 than it had been in 1992; the number of elderly citizens had only doubled. Assaults by the elderly rose even more spectacularly in the same period, leaping around 50-fold, albeit from a low base. Murder by the aged also rose at a time when the nation's overall murder rate fell.

In 1992, about seven times as many people in their 20s were found guilty of crime compared to over-65s. But by 2011, offenses by over-65s actually exceeded those committed by 20-somethings. Much of the media focus on elderly crime has been on sensational incidents, such as the 80-year-old chief of a fish processing company arrested in 2012 for killing his wife and hiding her body in a freezer for a decade, the 97-year-old man arrested for the attempted murder of an 84-year-old woman with a sword, and the 79-year-old woman who, allegedly harboring resentment against her husband for extramarital affairs he had had four decades earlier, beat him to death at their home near Tokyo.

But the vast bulk of elderly crime, and the vast bulk of the increase in elderly crime, has been plain old theft. Police figures show that different forms of theft accounted for 86 percent of all non-traffic-related crime by the elderly in 2011.

So what lies behind the phenomenon of pensioner crime in this predominantly law-abiding country? Figures from the United Nations Office on Drugs and Crime (UNODC) show that, proportionate to population, you were six times less likely to be assaulted in Japan than the United States in 2011, 39 times less likely to be robbed, and 16 times less likely to be a victim of murder and non-negligent homicide—even as US homicide rates dropped to levels not seen since the 1960s. Figures for 2010 show that people in Japan were 1,328 times less likely to be killed with a gun than

those in the United States. In that year, there were only three gun murders in Japan, where about 1 percent of homicides are committed with a firearm, compared to about 65 percent in the United States. Even compared to its East Asian neighbors also known for low crime rates, Japan is socially very calm. For example, you are around three times more likely to be robbed in South Korea, UNODC figures suggest. But while Japan's National Police Agency figures show the overall number of crimes in Japan plummeted by half, from 2.85 million in 2002 to 1.48 million in 2011, the portion of crime committed by the elderly spiraled.

One of the most common questions put to elderly defendants in the courtroom by the prosecution, the judge, and the defense lawyer is "Why?" It's also a big question for all of Japanese society. Why are so many elderly in one of the wealthiest and most socially obedient countries in the world turning to crime? There is hardly ever a satisfactory answer. Most elderly criminals are convicted for thieving, which would suggest poverty as a cause. Fully 46 percent of the 32,180 elderly men found guilty of crime in 2011 were convicted for shoplifting. For elderly women, the percentage was even higher: 81 percent of the 16,457 female offenders were shoplifters. In 2012, the number of over-65s arrested in Tokyo for shoplifting exceeded teenagers arrested for shoplifting for the first time ever. Whereas teenagers are more likely to steal game software or other items that can be easily resold, the most common item stolen by the elderly is food, which would appear to back up the theory that people are being forced to steal through financial desperation. But while poverty is presumably the driving force for some elderly crime, it does not persuasively explain the dramatic rise in criminality among Japan's grandparents. Over-70s are the wealthiest group in Japan. Government figures from 2008 show that the average household of two or more headed by a person over 70 had

net financial assets of 23 million yen (US\$230,000)—10 times the assets of households headed by a person in their 20s.. If poverty is driving the recent surge in elderly crime, why has “silver shoplifting” become so prevalent at a time when the over-70s are doing much better financially than their parents’ generation? Of course, averages will conceal the section of elderly who are living in poverty, but, as figures from the Welfare Ministry show, the rise in elderly receiving a welfare payment in recent years means that elder poverty has not been as acute as that of the population under 65. Yet elderly crime is rising and overall crime is falling.

Ochi Keita, a criminologist from Hosei University, told the Yomiuri newspaper that some elderly feel they have contributed so much to the nation’s economic growth that they will be forgiven for minor transgressions. In other words, shoplifting is a form of payback. Fujiwara Tomomi, who in 2007 wrote a book titled *Bosou Rojin* (Out-of-control old people), believes that in modern Japan, because family and community bonds have weakened, older people have become more isolated, and are therefore more likely to steal, stalk, and even assault: one in 13 offenses is a crime of violence, a higher proportion than for any other age group. In the debate over Japan’s “silver crime,” this is the most common explanation: old people commit crime because they are lonely and isolated.

Certainly Mr. Matsumoto’s neighbors in Ono, where he was raised, reckon they knew why he did it. “He was lonely. I feel sorry for him,” said a neighbor who remembered the 74-year-old as someone who readily cleared the snow from the footpath in front of his house, an appreciated gesture in the harsh winters of Nagano Prefecture, where snow is quick to freeze into packed ice. (She also remembered, less fondly, hearing enka music blaring through Mr. Matsumoto’s open windows in the summer.) Mr. Matsumoto’s life revolved around Ono, she

said, recalling that his friends were mostly people that he had started elementary school with almost 70 years earlier. “Some of them have died in the last few years,” the neighbor told me. “One of them died recently of a brain hemorrhage. He misses them.”

Another neighbor concurred with the loneliness-leading-to-shoplifting theory. Although Mr. Matsumoto was friendly to people, and decent, he lived alone and must have been lonely, he said. Neighbors appeared to know little about his family life. They were aware that he divorced a long time ago, that his ex-wife and children had moved to a place about 10 miles away and seemed to have little contact, though a neighbor did say Mr. Matsumoto used to send money to his estranged family.

Fried chicken

But if loneliness, or poverty, is the root of elderly crime, what can explain the actions of someone like 82-year-old Ushikoshi Takeko? This tiny old lady tottered into Matsumoto Summary Court charged with putting nine cutlets of *sanzokuyaki* fried chicken—a salty specialty of Nagano Prefecture—into her shopping bag and leaving the supermarket without paying. It was the fourth time she had been caught shoplifting, but only her first court hearing. She had previously escaped court by paying a fine. Mrs. Ushikoshi started stealing when she was 79, to the obvious mortification of her family, two of whom were in the public gallery witnessing her—and their own family’s—humiliation. She lived with her husband and their son and daughter-in-law, and their two elementary-school children.

The daughter-in-law testified for the defense. In a country where mothers-in-law are known for lording it over whichever unfortunate bride marries into the family home, it must have been the ultimate indignity for Mrs. Ushikoshi to watch her daughter-in-law take the stand on her behalf. The daughter-in-law, though, gave

kindly evidence. Unusually for a witness called by the defense, she didn't blame the defendant. The old lady was a valued part of the household, she said. "She makes the food in the house, she comes with us on holidays, she is very much involved with the rest of the family." Not much evidence, then, that Mrs. Ushikoshi committed her crimes out of loneliness.

"Did you see what she stole?" the defense lawyer asked the daughter-in-law.

"I thought it might have been things she liked, but when I looked into the bag at the police station, I saw it was the type of fried chicken that the children are fond of."

"Why do you think your mother-in-law stole?"

"I have given it much thought," she replied, "and I don't know, but the only thing I can think of is that because there was a time when life was tough for her, she was afraid to spend her money."

She also said that her mother-in-law contributed financially to the household purse, handing over one-third of her and her husband's pension—50,000 yen (US\$500)—every month. Mrs. Ushikoshi and her husband were left with 100,000 yen (US\$1,000) for incidentals—not enough to fund luxury living, but certainly enough to pay for a comfortable lifestyle. When Mrs. Ushikoshi was arrested, she had 4,000 yen (US\$40) in her purse, enough to pay for chicken she had pilfered twice over. Her lawyer reminded his client that she had been caught shoplifting on a previous occasion and her son had to suffer the humiliation of collecting her from the police station.

"You still did it again—why?" the lawyer asked.

"I knew it was bad, but it seemed I forgot what happened before."

"You couldn't control yourself?"

"No. I go into my own world when I am shopping."

"But if you put something in your bag, it's stealing, and you know that you shouldn't steal."

"Yes."

"Why do you get the urge?"

"I don't know."

"Can you promise not to do it again?"

"Yes."

Mrs. Ushikoshi didn't clearly explain the motive for her theft in court, but in a statement to police after she was first apprehended she said that paying for chicken would have been "a waste of money." She had money at the time of her crime, but she didn't want to use it to buy goods that could instead be furtively stuffed into her bag.

The same was true for the weed-killer and blank-cassette man, Matsumoto Yoshimatsu, who seemed to have no financial problems. Mr. Matsumoto shoplifted in style. We may never know what drove him to crime, but we do know what drove him to the scene of the crime: a taxi. To steal \$57 worth of merchandise, he took a \$30 cab ride to the Cainz home-center store. The taxi driver waited outside with his meter running, an unwitting would-be getaway driver, while his customer was inside the shop filling his small backpack with pilfered merchandise. Apprehended by a store worker just as he was getting back into the taxi, Mr. Matsumoto made sure to pay the taxi fare.

It turned out that Mr. Matsumoto had enough savings to pay for thousands of similar taxi fares. The prosecutor located 8.5 million yen (US\$85,000) sitting in his bank account, and Mr. Matsumoto told prosecutors that his total savings amounted to around 20 million yen

(US\$200,000). In a sign of contrition, he paid the shop 200,000 yen (US\$2,000) in compensation prior to his court appearance.

“So why did you steal?” his defense lawyer asked.

“I wasn’t thinking properly.”

“Why did you pay for the taxi and not the goods? What’s the difference?”

Mr. Matsumoto didn’t reply.

“You have no answer?” his lawyer pressed.

Again, no reply.

“Did you know you might be caught?”

“Yes.”

The judge also had questions for Mr. Matsumoto.

“When you put the goods in your rucksack, did you intend to pay?”

“I was of two minds.”

“Did you decide halfway through not to bother paying?”

No response.

Like Ushikoshi Takeko, the 82-year-old fried-chicken shoplifter, Mr. Matsumoto told police that he had money but didn’t want to spend it. He even used the same phrase: “It’s a waste of money” (*okane wa mottainai*).

“You said it was a waste of money to pay,” the judge stated. “You said you didn’t want to spend your money, so you shoplifted in Cainz. What did you mean by that?”

Again, Mr. Matsumoto gave no response.

Fried pork

On the day that Ushikoshi Takeko appeared at Matsumoto Summary Court for sentencing, a dapper-looking old man, well groomed and well dressed, sat in the public gallery watching the proceedings. Like Mrs. Ushikoshi, he was tiny; about 150 centimeters (5 feet) tall. He could have been her brother. But he wasn’t: his name was Shikada Kesae, and he was the next defendant. It turned out that he shared many things in common with Mrs. Ushikoshi. Like her, he lived with a son and daughter-in-law and their two children—though unlike Mrs. Ushikoshi, his spouse had died. Like Mrs. Ushikoshi, Mr. Shikada was a latecomer to shoplifting. He even stole from the same supermarket chain, Nishigen, though a different branch. And like Mrs. Ushikoshi, fried food was his downfall—though in Mr. Shikada’s case, it wasn’t chicken: he was caught with his pockets stuffed with deep-fried tonkatsu pork as well as rice balls.

Like Mrs. Ushikoshi, Mr. Shikada had stolen small items on a few occasions before, but had never spent time in jail. He also had savings, about 2 million yen (US\$20,000), and received 150,000 yen (US\$1,500) in pension payments each month—the same as Mrs. Ushikoshi and her husband combined. And like Mrs. Ushikoshi, he was also a retired factory worker. He was one year older, 83, and was also in apparent fine physical health, apart from his hearing disability.

The court clerk asked, “Did you bring your hearing aid?”

“What?”

“Did you bring your hearing aid?”

“What?”

The clerk fetched an earpiece used for simultaneous translation on the rare occasion when the defendant is a foreigner. “Here, please use this.”

After a brief opening statement by the prosecutor, the defense lawyer entered a not-guilty plea. The facts weren't in dispute, he said; his client had stolen the food, but he was of feeble mind when he did so and shouldn't be held criminally responsible. The prosecutor then described the contents of the book of evidence, including a brief description of the defendant's educational background, witness statements, victim statements, CCTV still images, and other items. The judge explained to the defendant that he would first be questioned by his lawyer.

But before his lawyer could open his mouth, Mr. Shikada loudly interjected to tell the judge about his remorse: "I can't sleep," he said, "I did something terrible. I can't sleep." As the lawyer began his questioning, it soon became clear that he and his client were at cross-purposes. Mr. Shikada had come to court to admit his crime and show his repentance as melodramatically as possible. But his lawyer had a list of questions he wanted to get through, apparently in the hope that his client's responses would indicate he was senile.

"When did you finish school?"

"I don't know. It was a long time ago."

"When did you start work?"

"It was a long time ago."

"When you left school, where did you work?"

"Nagano Denwa, it was a phone company."

"How long did you work there?"

"One year."

"After that where did you work?"

"I can't remember. Oh! It was on that road..." He paused to think about which road it was on but the lawyer moved onto the next question.

"How many companies have you worked for?"

"Around three."

"Which was the one you worked for longest?"

Mr. Shikada named a manufacturer, adding, "You are asking questions about things from a very long time ago. But I am more concerned with the terrible offense I have committed."

The lawyer ignored him. "Do you know where you are?" he asked.

Mr. Shikada ignored the question. "I don't know why I did it. Nishigen [the supermarket] is near my home, I see it every day. I can't live with myself. Why did I do such a bad thing? I did such a terrible thing, I can't think about anything else. Every day, it's all I think of."

"That's enough," said the lawyer. "My question is: Do you know where you are?"

Mr. Shikada stated his address.

"Not your address, do you know where you are now?"

"In court."

"Why?"

"I did a bad thing, I think of it every day."

His lawyer tried again: "Why did you shoplift?"

"No matter how much I think about that, I still don't know."

"Was it done without thought?"

"Yes."

"Why didn't you use money from your savings?"

"I don't know."

"Was it because you didn't want to eat into your savings?"

“I wasn’t thinking in that way at all.”

The defendant insisted that he could live on what was left of his income once the loan repayments were made, though he said he sometimes dipped into his savings. He was emphatic that his shoplifting was not caused by a lack of money. And so it went on. The questioning from his lawyer lasted for about 30 minutes: He asked about Mr. Shikada’s deceased wife, which kanji characters were used to write her name; about his grandchildren, and the kanji characters used to write their names; his previous offenses; his smoking (five cigarettes a day); his drinking (just a cup of sake every day); his pension; his son and what type of work he did (the son had a part-time job); and his own living situation.

“What is your daughter-in-law’s first name?” the lawyer asked.

“I don’t know. I don’t talk to her.”

“So you don’t remember. That’s your answer?”

It was. In Japan, it isn’t unusual not to know the first name of even someone you know reasonably well, because colleagues almost always address each other by family name only, and friends usually do as well. But to not know the first name of a daughter-in-law indicates either an extraordinary lack of interest in her, or—as Mr. Shikada’s lawyer was attempting to persuade the court—senility. The problem was that Mr. Shikada’s crime appeared deliberate and calculated, not really something that a senile man would be likely to perpetrate. He had stuffed some goods in his pocket, but had placed others, such as kimchi vegetables and udon noodles, in the shopping cart, and had paid for them at the cash register.

The prosecution called as a witness a worker of the category known colloquially as “manbiki G-Men”: store detectives hired by supermarkets to catch shoplifters. (Manbiki means shoplifting; “G-Men”—also a US slang term for

FBI agents—derives from a popular Japanese detective drama called G-Men 75, which aired in the 1970s and early 1980s.) Despite their moniker, manbiki G-Men are usually women who pose as ordinary shoppers. On the day in question, Mr. Shikada aroused the suspicion of the store detective because he looked to his left and right after picking up some deep-fried pork. “He had a basket in his right hand and he was carrying the fried food in his left hand. That looked suspicious to me,” she said. He didn’t put the goods straight into the basket as shoppers usually do; instead, he whipped the food into his pocket. The store detective watched Mr. Shikada, pocket bulging, pay for the food that was in his basket and followed him out to the car park.

“I went after him, and called to him,

‘Excuse me. Don’t you have food that you didn’t pay for?’”

“He said, ‘No,’ and had a very rebellious attitude. I then pointed to the fried pork and rice balls in his pocket, and he just said he would pay.”

But the matter wasn’t simply resolved by Mr. Shikada paying for the goods he had tried to steal. The supermarket called the police anyway.

“How long have you been doing this job?” the prosecutor asked the store detective.

“Since 2003.”

“How many people do you usually catch per month?”

“About seven or eight.”

“In your 10 years’ experience, how many people did you catch who turned out to have a sickness?”

“Two. The last time was about three or four years ago.”

“What happened?”

“When I asked whether they had food, they didn’t reply. That person had dementia.”

“What about the defendant?”

“He replied without hesitation, and he followed me into the office when I asked him to.”

Once the store detective had finished giving evidence, that day’s hearing ended. Mr. Shikada walked into the corridor with his lawyer.

“Who was that woman?” he asked.

“She works in the supermarket as shoplifting security,” his lawyer replied.

“Oh, really?” It was the closest that the defendant had come to sounding senile, and it happened out of earshot of the judge. Mr. Shikada’s trial for fried-pork theft was far from finished, but by now the crime had taken up about three hours of court time over three hearings. The elderly man had given no answers about motive—not in court, anyway. According to a statement he gave police soon after he was caught, however, he said he stole because “it was a waste of money” to pay for the goods. Just like Mrs. Ushikoshi, who stole fried chicken, and Mr. Matsumoto, who stole cassette tapes and weed killer, Mr. Shikada had money but didn’t want to use it, like a squirrel afraid to eat into his stores.

Among the explanations for the surge in elderly shoplifting, this, I believe, is the most likely. Many elderly people shoplift not because they are poor now, but because they are afraid they may become poor. There is a wide sense of foreboding in Japan about the nation’s future, a sense that Japan’s best years are in the past. People like Mr. Matsumoto lived most of their life in a country that could seemingly do no wrong economically. For 52 years, from 1946 to 1998, Japan’s economy grew every year,

apart from a 1.2 percent drop in the “oil shock” year of 1974. For the nation it seemed there were no boom-and-bust cycles any more, just cycles of lower growth and higher growth.

In 1964, Japan overtook West Germany as the second-largest economy in the world. For seven years of the 1960s, GDP growth exceeded 10 percent. By the 1980s, a combination of pronounced state influence in the economy, protectionism, and a hard-working and well-educated populace—combined with low crime and high employment—made Japan appear economically invincible. The possibility of Japan even overtaking the United States as the world’s most powerful economy began to seem realistic, and books titled with variants of “Japan as Number One” became bestsellers. The country never did become number one, however, and now it is no longer even number two. In 2010, China became the largest Asian economy. Even when it comes to electronics Japan is no longer a world beater. In and after 2012, the electronics giants that once made Japanese proud—Sharp, Panasonic, and Sony—were downgraded to so-called junk status by ratings agencies. If those companies are to win back market share they will have to once again start making gadgets that people can’t do without. As it stands, Japanese companies have an insignificant share of the personal computer and smartphone market, losing out to companies from South Korea, Taiwan, the United States, and China.

Steven Vogel of UC Berkeley cites a Japanese government report that the country’s electronics makers produced 70 percent of the components of an iPod in 2005, but only 20 percent of the parts of an iPad in 2010. In an Asia-Pacific Journal article titled “What Ever Happened to Japanese Electronics?: A World Economy Perspective,” Vogel points to figures that show Japanese manufacturers’ share of DRAM chip production worldwide slumped from 76 percent to 3 percent between 1987 and 2004, and their share of liquid-crystal displays

in phones and TVs went from 100 percent in 1995 to 5 percent a decade later.

Japan has been stuck in something of an economic rut for 20 years. While it has not been doing as badly as many say—Japanese and foreign commentators often refer to the 10 years from 1992 as Japan’s economic “lost decade” even though unemployment never even reached 6 percent, and GDP only declined in two of those 10 years—there is a sense of malaise.

Japan has a pension system that has delivered to date, but there is a widespread belief that, as the nation ages, there won’t be enough funds to provide people a living income. The average life expectancy from birth in Japan is 83.5 years, but, as the OECD notes in its “Pensions at a Glance 2013,” those who reach 65 can be expected to live another 21.7 years—in other words, until they are almost 87. In 1980, 9 percent of Japan’s population was over the age of 65. By 2040, that share is expected to reach 34.4 percent, compared to 20.4 percent in the United States. Japan’s elderly are projected by the Ministry of Internal Affairs and Communications to make up 38.8 percent of the population by 2050.

Part of the worry for older Japanese is that, even though the average Japanese senior has significant assets, they are heavily reliant on pension income, since their assets provide so little revenue. About three-quarters of such assets are in ultra-low-interest bank deposits or real estate that yields little or nothing. Money in the bank gives a pitiful yield. As of early 2015, fixed-term deposits at Postbank, the post office bank that is the largest savings institution in the world, offered yields as low as 0.035 percent. Ultra-low deposit rates are not uniquely found in Japan though, whereas they have been an unwelcome feature for savers in the United States and European Union for less than a decade, in Japan they have lasted for over 20 years.

Property has also proven to be a poor investment in most of Japan. After peaking in 1991, land prices in urban areas fell every year for the following two decades. As of 2012, land prices in urban areas outside of the six biggest cities were down 49 percent, and commercial prices down 76 percent. While the real estate markets in Tokyo, Osaka and Nagoya show signs of recovery, in other regions the property market has remained generally lifeless. This is especially so in smaller cities like Matsumoto, where you can pick up a dated but decent family apartment for as little as \$30,000. “There is no investor market in Matsumoto,” says Ichikawa Yoshinori, a local real estate agent. “There are too many vacant apartments, so people don’t want to take a risk.” While all of East Asia is racing toward an aging society, Japan is galloping faster than its neighbors. The UN estimates that South Korea’s population will fall 8 percent, to 44 million people, by 2060; China’s will drop 10 percent to 1,211 million. But Japan’s will plunge 32 percent, to just under 87 million. A declining population is obviously a liability for a property market.

And there are other worries for asset-rich old people. Seeking to replace deflation with 2 percent inflation, under the “Abenomics” of Prime Minister Abe Shinzo Japan has flooded the money supply with trillions of newly printed yen in the hope that cheap money would encourage spending, weaken the yen and, importantly, cause prices to rise in an economy crimped by deflation. Inflation, however, tends to hurt those on fixed income, such as pensioners, more than any other group. And if Mr. Abe’s policy ultimately fails, as previous government stimuli have done, then Japan may be left with more debt and little to show for it. Japan’s public gross debt-to-GDP ratio was 226 percent in 2014—the highest in the developed world, and over twice the percentage of the United States. This, according to the OECD, “puts the economy at risk.” The risk for the elderly is huge. If Mr. Abe’s policies succeed and inflation returns, people on fixed incomes

may be hurt. If they fail, and national debt spirals out of control, pensioners could really suffer financially.

Opinion polls suggest that the average Japanese believes that Abenomics will not lead Japan back to the economic glory days, and they are worried about their future. Kyodo News reported on a government survey in May 2014 showing that just over two-thirds of Japanese feel they will not have enough money when they retire. Three-quarters of that group said their provisions for retirement are “quite inadequate.” Fewer than one in 50 said they would have enough money to live on, and the remainder believed they would have just a bare minimum.

We don’t know how much attention the elderly shoplifters described above paid to Japan’s fading economic strength, but their explanations to police suggest that a sense of financial uncertainty, warranted or otherwise, has turned them into “silver shoplifters.” One of the causes of elderly crime may be uncertainty, but the response of the courts to the surge has been entirely predictable. The Japanese judicial system is not as ageist as that of some other countries. For a defense lawyer to argue that a defendant who is otherwise healthy should be treated with special lenience due to advanced age would probably be fruitless. Repeat offenders go to jail regardless of their age.

While fewer than 4 percent of English and Welsh prisoners were over age 60 in 2013, according to UK Justice Ministry statistics, in Japan the figure was 18 percent. Even allowing for the proportionally greater numbers of elderly in Japan, the rate of elderly incarceration is 3.3 times higher than in England and Wales.

The trend, moreover, is on a worrying upward trajectory. From 1924, when such records began, until 1991, Japan only once jailed more than 100 males over the age of 70 in a single

year—that was in 1953. But in 2012, Ministry of Justice figures show Japanese courts jailed 903 males over 70. A rapidly ageing prison population with its attendant issues of extra medical and other costs and the questionable rationale behind locking up non-violent elderly criminals, isn’t just a Japanese conundrum. As the Urban Institute’s KiDeuk Kim and Bryce Peterson pointed out in a 2014 report the number of over-65s in US federal prisons is expected to rise from 3% of the population in FY 2011 to 9% by FY 2019.

And as with the United States Japanese prisons are no place for those who are frail of body or mind. In 2010, the Nippon TV channel received rare permission to film and interview inmates for a special report on elderly prisoners. Filming inside Kurobane prison in Tochigi Prefecture, the channel showed a prison system woefully unprepared to deal with the increasing numbers of prisoners who are more suited to a nursing home than a prison. The broadcast showed prisoners with Alzheimer’s disease who have to be taught and retaught every day how to do simple tasks. The program also showed younger prisoners wearing white coats acting as caregivers for the older prisoners, helping them to bathe and walk. At night, with prisoners in their cells, the prison guards took on the caregiving role for inmates who are senile, incontinent, and disabled. More than 10 percent of the inmates of Kurobane prison are over the age of 65, and many of them clearly shouldn’t be in a prison at all. Japan’s prison system is ill-equipped to handle elderly convicts suffering from senility. The Nippon TV crew also showed footage from Hiroshima Prefecture’s Onomichi prison, one of the few with a wing specially adapted for the elderly. In Onomichi there are more individual cells for older inmates, who tend to be crankier and less inclined to share cells. Each cell has a rubber mat and padded walls. Prison stairs are fitted with handrails. Older people have it somewhat easier compared to other inmates. They have to work less—six hours compared to the standard

eight hours expected of most prisoners. In some jails, the elderly are excused from marching in military formation when moving around the prison. Many elderly prisoners are simply no longer able to march military-style, while others are unable to walk at all without aid.

Mr. Matsumoto, the 74-year-old who took a taxi to go shoplifting, may have been unable to recall the name of the prison he was in previously, but he remembered enough about it to tell the judge he really didn't want to go back.

The judge for Matsumoto Summary Court was Kitamura Koji. He is neither hard nor soft by Japanese judicial standards—he follows the established judicial practice of jailing repeat offenders regardless of the crime. In 2013 he jailed one in three of those who came before him. Once he had established to his own satisfaction that Matsumoto Yoshimatsu was not senile, the judge made it clear that Mr. Matsumoto would be going to jail. He sentenced Mr. Matsumoto to 14 months in jail with 40 days off in lieu of the time already spent in custody. The old man didn't react; he just continued to look vacant. The two guards flanking him put the handcuffs back on, and he was led out of the courtroom on a rope. The sense of loneliness from this sad man was palpable.

Mr. Matsumoto will receive classes in jail to help him change. The Ministry of Justice says that "Guidance for reform is provided through lectures, gymnastics, events, interviews, consultations, and advice, along with other methods." The guidance is meant to encourage prisoners to "understand their victims' feelings and realize a sense of remorse" as well as to "lead a regular life with a sound way of thinking, thereby promoting their own mental and physical health." It is also aimed at helping convicts in "acquiring the necessary skills to adapt to a societal life." This type of guidance

may be appropriate for younger offenders, but is probably not for the elderly like Mr. Matsumoto.

Likewise for Shikada Kesae, the volubly remorseful 83-year-old who stole the fried pork and rice balls. Mr. Shikada was back in court on a sweltering day in August for his seventh court appearance since his first hearing in freezing-cold January. Mr. Shikada's lawyer was still fighting an unusually valiant battle for his client, arguing a not-guilty plea on the basis of senility. The day's evidence was given by a psychiatrist from Shinshu University Hospital who appeared at the request of the defense. In her opinion, based on brain scans and tests, Mr. Shikada was suffering serious brain degeneration and was showing symptoms of Alzheimer's disease. According to the psychiatrist, Mr. Shikada would have known the difference between right and wrong when he shoplifted, but he would have had difficulty controlling his emotions. I asked Mr. Shikada's lawyer, Ozawa Susumu, why he was putting so much work into a relatively minor case for which, as a state-appointed lawyer, his payment would be about half what he would get if he was privately hired. "It would be easy," he said, "to take this case and win a suspended sentence. But shoplifting is often a repeat offense, so what happens if he does it again? If we don't fight this case and have him properly assessed, jail would be a certainty next time round."

In the end Mr. Ozawa got a partial victory. His client, Mr. Shikada, was found guilty, but he didn't get a suspended sentence: He was fined 200,000 yen (US\$2,000). That means that if he is caught shoplifting again he will likely be given a suspended jail sentence rather than an actual jail sentence.

Unlike Mr. Matsumoto and Mr. Shikada, 82-year-old Mrs. Ushikoshi, the fried-chicken shoplifter, was making her first appearance as a defendant because, as mentioned earlier, her

previous transgressions had all been dealt with outside of court. The judge sentenced her to 10 months in jail, suspended for three years. Forgiveness should Mrs. Ushikoshi steal again is unlikely. As with their male counterparts, elderly women are being sent to jail in record numbers. In the 69 years from 1924 to 1992, Japan jailed 179 women over 70. The highest numbers were in the years 1934 and 1992, in each of which eight females over 70 were sent to prison. But—and here is a startling statistic—in 2012 alone, Japan jailed 179

women over 70, the same as the total from 1924 to 1992. Older women used to be an invisible part of the prison population, but in 2012, one in 12 newly imprisoned women was over 70.

Mrs. Ushikoshi showed no emotion upon hearing her penalty. The judge warned her not to come before him again: “You don’t want to start a life of going in and out of prison.” She bowed and thanked him, put her hat back on, and tottered out of court.

Paul Murphy is an award-winning journalist. His reports about Japan have appeared in The Japan Times, International Herald Tribune/Asahi Shimbun, Irish Independent, Irish Times and RTÉ’s Prime Time television program, among others. He is currently a reporter for the RTÉ Investigations Unit in Dublin. This article is adapted from his book *True Crime Japan: Thieves, Rascals, Killers and Dopeheads: True Stories From a Japanese Courtroom*.

