

Takehisa Nakagawa,  
*Administrative Informality in Japan: Governmental Activities Outside Statutory  
Authorization*

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Abstract by Catherine Ng

Professor Nakagawa compares Japanese and American attitudes toward informality in administrative procedure. Informal administrative procedure refers to activities that are outside the scope of a statute and usually undertaken for policy consideration. On the other hand, formal administrative procedure refers to activities that are legally and statutorily provided within. Professor Nakagawa notes that Japanese lawyers may agree on a half-formal and half-informal procedure in reconciling their ambivalence toward balancing the need for flexible decision-making process versus adherence to the rule of law, which is similar to American attitudes of formalism versus efficiency. First, Professor Nakagawa examines the differences between Japanese and American formality and sets forth a model explaining how lawyers in each country understand the formal and informal dichotomy. For example, Japanese concerns regarding informality are focused on the substantive side while American concerns are focused on the procedural side. Second, Professor Nakagawa provides a brief guide to "administrative guidance" in Japan, which refers to voluntary communications by public officials to persuade others (individuals or firms) to behave in a certain way. Third, Professor Nakagawa analyzes two critical cases that have shaped administrative guidance, namely, *Nakatani v. Tokyo-To* and *Takahashi Kikue v. Musashino-shi*. Both cases demonstrate conflicts regarding administrative policy goals and give rise to hypothetical analogies to United States' practices of "arm-twisting," "jawboning," or "friendly persuasion." Finally, fourth, Professor Nakagawa discusses three analogous phenomena in informal administrative process.