

# The Death Penalty in Japan—Will it Lose its Appeal?

Chris Pitts

## Abstract

This paper examines the prospects for abolishing the death penalty in Japan. It outlines the trend towards abolition that has taken place in the world since the end of WWII, and how Japan's elite resists joining that trend. It notes the large number of wrong convictions (*enzai*) produced by the Japanese justice system, gives a selection of examples, and makes suggestions for reform. It concludes that without reform, abolishing the death penalty (or at least imposing a moratorium on executions) is particularly necessary and urgent in Japan to save more innocent people from the gallows.

## Background

Looking back through the development of civilization, we see how agitation by enlightened thinkers plus the passage of time has changed attitudes to a wide range of social activities. Slavery and child labor were once regarded as necessary and natural. Gruesome public executions were popular public spectacles. Torturing animals to death was once regarded as family entertainment, as was mocking and taunting mentally ill and physically handicapped humans. Men having impunity to assault their wives (and parents their children) were unquestioned. Racial minorities were rarely protected in law, let alone in practice.

However, during the last 120 years or so, women in many countries have won the right to vote in parliamentary elections (New Zealand 1893; Japan 1946) and to access higher education. Nearly all democracies now have laws to defend minorities. Most recently, the right to love and be loved irrespective of individual gender preferences is being recognized and protected in law. In countries where these rights are not yet recognized, we see people organizing to challenge and to change this. In that context, we can be confident that our descendants will eventually view the death penalty as just another barbarism of the past.

*"The time will come when all people will view with horror the light way in which society and its courts of law now take human life; and when that time comes, the way will be clear to devise some better method of dealing with poverty and ignorance and their frequent byproducts, which we call crime."*

- Clarence Darrow, American lawyer and leading member of the American  
Civil Liberties Union

### The Universal Declaration of Human Rights (UDHR)

Following the Second World War, prompted by its widespread destruction, huge loss of civilian life, and industrialized Nazi atrocities against Europe's Jews, the young United Nations tasked a drafting committee, chaired by Eleanor Roosevelt, with drawing up a document specifying the fundamental rights which every person on earth should enjoy. That document is the Universal Declaration of Human Rights (UDHR).

*"A supremely important pair of facts about the UDHR is that the committee which devised it was not merely international but drawn from all quarters of the world, and in its personnel represented the world's major traditions. When it was presented to the assembled United Nations in 1948, those who welcomed it most warmly were Third World countries who saw in it their hope of casting off colonialism's yoke. The great powers of the United States, Britain, France and the Soviet Union were, by contrast, less enthusiastic, because it threatened to interfere with their free hand in their 'spheres of influence', as euphemism had it." (1)*

The UDHR has 30 articles, covering areas such as the right not to be enslaved or tortured, the right to an education, and the rights to freedom of assembly and freedom of religion. The first two articles basically say that everyone is born equal and that the declaration applies to everyone, while Article 3 guarantees a "right to life" as the first and most fundamental human right. It is not playing with words to interpret this to mean that no one should take the life of another human. Not as a royal privilege, nor as a demonstration of power, nor as punishment for breaking the law.

In legal terms, premeditated or planned killing is murder, as distinct from manslaughter. The death penalty is premeditated killing by the state; imposed by its courts, and carried out by its penal system. It should be called murder. The death penalty contravenes the UDHR.

The death penalty: what is it good for?

*"He who is without sin among you, let him throw a stone at her first."*

Yeshua of Nazareth (Jesus Christ), interrupting the public execution of a woman  
for adultery. John 8:7

*"What says the law? Do not kill! How does it say it? By killing!"*

Victor Hugo

*"The profound moral question is not, 'Do they deserve to die?' but 'Do we deserve to kill them?'"*

Sister Helen Prejean, CSJ., author of *Dead Man Walking*

Despite what celebrated writers write or clever thinkers think, can we even partially justify retaining the death penalty in today's world? Even if we don't accept the extreme view that it's the only thing protecting us from anarchy and mayhem, perhaps it might in some way act as a brake on the homicidal tendencies of certain groups or individuals? Perhaps it functions to defend, at least partially, the safety and right to life of larger numbers of people? Is there any evidence that the "ultimate sanction" holds down the murder rate, or the frequency of other crimes that may result in the deaths of innocent people?

Opinion-formers and national leaders who have studied the issue objectively have concluded, overwhelmingly, that the death penalty serves no such purpose and should be abolished.

### The trend to abolition

In 1977, just 16 countries (about 8%) had no death penalty. At the end of 2016, that figure was 140 countries (about 71%). In the last ten years:

*2008: Uzbekistan, Chile and Argentina abolished the death penalty for all crimes.*

*2009: Burundi and Togo abolished the death penalty for all crimes.*

*2010: Gabon abolished the death penalty for all crimes.*

*2012: Latvia abolished the death penalty for all crimes.*

*2013: Bolivia abolished the death penalty for all crimes.*

*2015: Congo (Republic of), Fiji, Madagascar and Suriname abolished the death penalty for all crimes.*

*2016: Benin and Nauru abolished the death penalty for all crimes; Guinea abolished the death penalty for ordinary crimes.*

*2017: Mongolia abolished the death penalty for all crimes. (2)*

Furthermore, most of the 56 countries that retain the death penalty rarely use it, with a few notable exceptions. China executes more people than the rest of the world put together. Although the exact number of executions in China is a state secret and is not announced, it is widely believed to be close to 2,000 per year. In 2016, 90% of all executions worldwide took place in China, Iran, Saudi Arabia, Iraq and Pakistan. For the first time since 2006, the United States of America was not among this top five; it slipped to seventh place behind Egypt. (3)

Even in the USA, where a majority of 31 states retain capital punishment, the number of abolitionist states is growing, and growing at an increasing rate. As of 2016, nineteen states had abolished death as a punishment: three in the 19th century (1800s), nine in the twentieth (1900s), and seven so far this century: New Jersey, New York, New Mexico, Illinois, Connecticut, Maryland and Delaware. (4)

### The consequences of abolition

“Before and after” statistics show that countries that abolished the death penalty did not suffer increases in the murder rate.

Many years before the UK actually abolished hanging in 1965, a Royal Commission was set up to gather evidence from other countries as to its likely result. It reported,

*“no clear evidence . . . that abolition has led to an increase in homicide.”*

(United Kingdom Royal Commission, 1953)

Capital punishment was removed from the Canadian Criminal Code in 1976, and,

*“the murder rate is still falling.”*

(Canada, 1986)

A recent survey of all available data came to the conclusion that abolishing the death penalty,

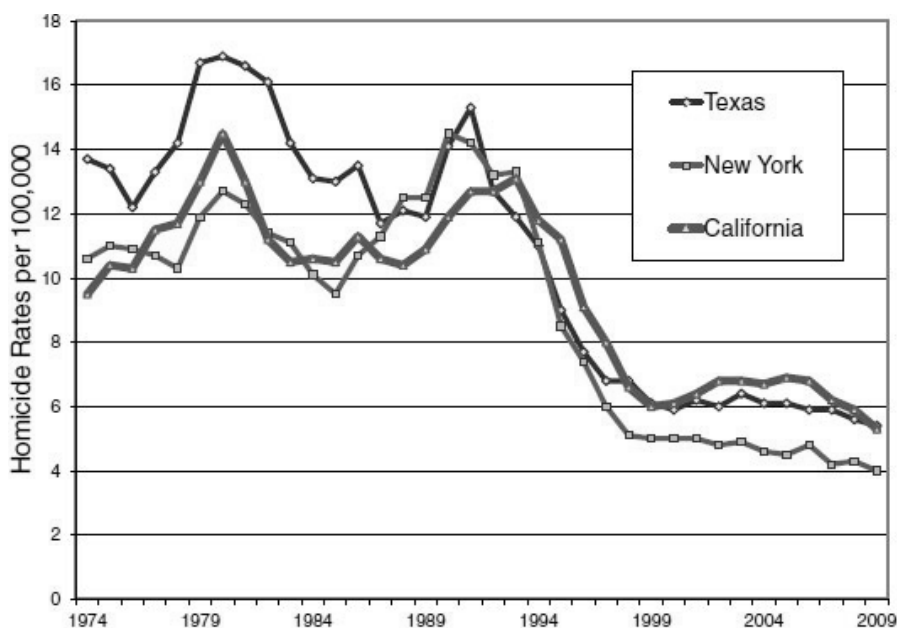
*“has never been followed by a notable rise [in the murder rate].”*

(United Nations, 2007)

### From coast to shining coast: New York to California via Texas

Comparing the murder rates in just three states of the USA produces startling evidence

that capital punishment has zero objective effect on public safety. Figure 1 plots the homicides per 100,000 people in New York, California and Texas between 1974 and 2009. During that time, New York executed nobody, California executed 13 people, and Texas executed 474 people. In each state, the ups and downs in the number of murders each year were almost identical. Having the death penalty or not, executing many people or few, appears to be irrelevant as a deterrent to murder. Factors in national politics, or which affect US society nationwide, obviously have much larger influence.



[Source : [www.theguardian.com/news/datablog/2011/sep/21/death-penalty-statistics-us](http://www.theguardian.com/news/datablog/2011/sep/21/death-penalty-statistics-us)]

Figure 1

As an aside, note that the spectacular fall in the number of homicides from about 1993 was accompanied by a similar decline in *all* categories of crime in most of the USA. This took sociologists and criminologists by surprise; most had been predicting a steep rise. What could have caused this rapid and prolonged social improvement? Levitt and Dubner, in their book *Freakonomics*, attribute it to the verdict in *Roe vs. Wade*—in other words, the legalization of abortion in the USA—20 years earlier.

The years since 2002 continued the same pattern: all states have seen a year-on-year decline in the average homicide rate; all the non-death penalty states have enjoyed a slightly lower rate. (5)

### Inside the mind of the killer.

Several researchers, including one in Japan, have interviewed convicted murderers to try to find out what they were thinking when they were planning their crimes. Very few admitted to worrying about the death penalty—a big majority even believed they would not be caught! While the existence of the death penalty may be the only thing that is holding *you* back from killing your parents, your professor, or the person who beat you to the last parking space in the mall this morning, several decades of research around the world have failed to find concrete evidence of its deterrent effect. Like so many popular beliefs with no basis in science (e.g. “the lucky streak” ), it occupies the realm of comforting myth.

Did Japan’s death penalty prevent the Tokyo subway sarin gas attack in 1995?

Did Colorado’s death penalty deter the killers at Columbine High School in 1999?

Did the existence of the death penalty worry the “9/11” terrorists in 2001?

*"It is said to be a deterrent. I cannot agree . . . I do not now believe that any one of the hundreds of executions I carried out has in any way acted as a deterrent against future murder. Capital punishment, in my view, achieved nothing except revenge."*

Albert Pierrepoint, Britain’s last official hangman (from 1932 to 1956)

### Revenge or rehabilitation? A tale of two convicts

As a youth, Jimmy Boyle was a gang member in Glasgow, where he earned the reputation “Scotland’s most violent man.” At age 22, he was tried and convicted of murdering a rival gangster (he always claimed that he had only chivved (cut) the man; someone else actually killed him). During his 15 years in prison, Jimmy reformed, participated in a rehabilitation program, and wrote his autobiography, *A Sense of Freedom*. He gave the proceeds to various good causes. He was released in 1982, and soon after he set up The Gateway Exchange in Edinburgh, which helps disadvantaged addicts. He is now a renowned sculptor, has written a second book and co-authored a third.

Tookie Williams, whose father had abandoned him as a baby, was a Crips gang member in South-Central Los Angeles. He was tried and convicted of robbery and murder (he consistently denied killing anyone), mainly on the testimony of other gang members. He was sentenced to death in 1981, aged 28. At first he adjusted badly to prison, causing trouble and assaulting warders and other inmates. But after two years in solitary confinement, Tookie reformed, got religion, and repented his past life. In 1996 he published the first of eight books with an anti-gang, anti-violence message, aimed at

children and young gang members. He was commended by President George W Bush in 2004, and nominated for the Nobel Peace Prize several times.

Unfortunately, Tookie never got the chance to rehabilitate into society and make good on his promise to “*spend the rest of my life working to reverse the cycle of youth violence.*” California Governor Arnold Schwarzenegger turned down Tookie’s final appeal, opening the way to his execution in December 2005, a few days before his 52nd birthday.

### Imperfect justice: the UK and the USA

If a country’s legal system is to command respect from the population, it should be—or at least be believed to be—fair.

*“It is better and more satisfactory to acquit a thousand guilty persons than to put a single innocent man to death.”*

Moses Maimonides, 12<sup>th</sup>-century Sephardic legal scholar

Because mistakes and miscarriages will never be totally eliminated, there needs to be the possibility of review, correction and compensation. The death penalty removes these final safeguards. A major factor behind the eventual abolition of the death penalty in Britain in the mid-60s was public disquiet over the dubious conviction of Timothy Evans (executed in 1950), and the scapegoating of Derek Bentley (executed in 1953). Since then, British courts have *wrongly* convicted more than 50 people of murder, or of planting bombs leading to death (formerly capital offences)(6). An average of nearly one person every year is tried and convicted, but later exonerated and acquitted. How many of those innocent people might have been hanged, if Britain still had the death penalty?

The *National Registry of Exonerations in the USA* covers all crimes and lists over 2,140 cases of people being tried, convicted, and later declared innocent since 1989. For murder cases, since 1973, 159 people have been exonerated and released from death row. Some of these 159 convictions were overturned as a result of DNA testing of stored evidence, but most were not. The convictions were often arrived at through a combination of a socially disadvantaged defendant being treated by a prejudiced judicial system. (7)

### One example: the Anthony Porter case

Convicted in 1983 for a double murder committed near a pool on Chicago's South Side, Anthony Porter spent nearly 17 years on Illinois's death row for a crime he did not commit, all the while maintaining his innocence. The case was taken up by investigator

Paul Ciolino working with Professor David Protess and journalism students (!) from Northwestern University, who tracked down both the original witnesses and the actual killer. Their investigation revealed that the state's sole eyewitness, in a total of 17 hours of interrogation, had been "threatened, harassed, and intimidated" into testifying that Porter was the killer. (8)

### Japan's dysfunctional justice system

Miscarriages of justice in the UK, the USA, and most democracies often take several years to reveal and to correct. In Japan, where the original trial can take decades before the judgment is announced, lawyers are quick to offer practical, rational advice to the accused along these lines: *"Don't even think about pleading innocent, even though you are innocent. Admit guilt, pay the fine or do the prison time, then get on with your life."* Many factors contribute to the inadequacy of justice in Japan: the draconian police powers for detention and interrogation; the opaque workings of prosecutors; the lofty isolation of judges from the life experiences of most of the population; the willingness of judges to accept confessions—often forced—because of the pressure on them to convict defendants, however flimsy or circumstantial the evidence; and the reluctance of younger judges hearing appeals to overturn the rulings of more senior judges.

The reasons why Japanese notions of justice are so different from the Western tradition lie partly in the fact that the end of feudalism—and the imposition of universal suffrage and democracy—are so recent in this country; and partly in an Asian or Eastern culture that values the interests of the group, or the nation as a whole, over the rights of individuals. (9) The philosophy of policing that gives rise to and tolerates such high rates of abuse is explained in detail by Karel van Wolferen in *The Enigma of Japanese Power*. Since the middle of the 19<sup>th</sup> century, he claims, the role of the police in society has been like that of a very strict nanny in an upper-middle class family.

*"They investigate the subject's personal background and try to determine why he went wrong . . . If they yell at him in the interrogation, their anger is not because they hate him, but because he is a good person who did wrong and will not admit it." (10)*

Thus, when a person is detained in connection with a crime, police tend not to presume innocence, nor to investigate the facts of the case. Rather, they try to make the accused—guilty or innocent—confess to the crime. And they certainly have plenty of tools of coercion at their disposal. They can question "suspects" continuously for long periods.



They decide when the suspect gets food or drink, toilet breaks, and contact with a lawyer. They manage and operate the cells (*daiyou kangoku*) in which suspects are detained. They can detain suspects for up to 23 days, during which time the suspect can lose their job and/or fall into arrears with rent and other bills. There is no bail. There is no right to even one phone call. There is no right to silence.

*"The right to silence is a cancer. We must obtain confessions."*

Japanese prosecutor, quoted in (11)

Until very recently, interrogation sessions were not videotaped or recorded; even now police can choose which parts of an interview to record, and how much of that to pass to the courts. The Japan Federation of Bar Associations calls it,

*"a breeding ground for false charges." (12)*

*"When the clock hit about 5 p.m., the police would take away my wristwatch and just continue their interrogation until midnight."*

Ishikawa Kazuo, wrongly accused of murder in the Sayama Case (1963)

*Kyousei kokuhaku* (forced confessions) and *enzai* (wrong convictions)

The United Nations Committee against Torture has repeatedly expressed its criticisms of the procedures followed by police, prosecutors and courts in Japan, noting that they are not being reformed to match Japan's commitments under the relevant convention. Their latest response (May 2007) notes that the Japanese government report was five years late, lacked significant evidence, and caused "*concern, serious concern, or grave concern*" on a range of issues relating to pre-trial interrogation, especially with regard to forced confessions. The Committee believes that collectively, Japanese police procedures "*can be described as torture.*" Japan is due to report again this year (2017), to indicate the progress made on more than 25 specific issues. (13)

*"Many people crack under pressure and confess to crimes they haven't done. Almost all convictions are obtained thanks to "confessions." In 2012, a Nepalese man sentenced to life imprisonment was found not guilty of a crime for which he served 15 years in jail and had always claimed he was innocent of." (14)*

It is hardly surprising that Japanese courts routinely hear defendants retract their so-called "confessions." What *is* surprising is that they find defendants guilty mainly (sometimes solely) on the basis of the confession, even in cases carrying the death penalty.

## Magazines, movies and TV

The number of known cases of innocent people being convicted in Japanese courts is so large that there is a quarterly magazine, *Enzai Fairu* (Wrong Convictions Files), devoted to exposing them. Its editor, Imai Kyohei, is confident that under present conditions they will never run out of cases to write about. (15)

The behavior and attitudes of police, prosecutors and judges were made known to many Japanese people for the first time by writer/director Suo Masayuki's 2006 movie—based on a real crowded-train groping case—*Soredemo, boku wa yatte inai* (I Just Didn't Do It). The mistakenly-accused young man naively believed that, if he just told the truth, the court would eventually acquit him. He was wrong.

*[This was] "not so much a movie I wanted to make as a movie I simply HAD to make."*

Suo Masayuki

In a TV panel discussion broadcast soon after the movie's release, lawyers were asked to give advice to anyone falsely accused of groping (*chikan kouji*). One suggested always to carry the number of a lawyer in your cell phone, and to contact them immediately in the hope they can get to the scene *before* the police take you away.

Another cautioned *against* believing that an innocent person would have nothing to worry about. Knowing that an accusation carries more weight with the police than the truth, he simply recommended, "Run!"

## The power of the prosecutors

Taxi driver Yanagihara Hiroshi was convicted in a rape case in Toyama in 2002, but was exonerated and released two years later after the real rapist was detained. He had confessed under police pressure; the confession was the basis of the prosecutor's case. Evidence of Mr Yanagihara's innocence—his taxi radio log and the fact that the intruder's footprint did not match his shoe size—was withheld from the defense lawyers, the court and the judge. This is legal in Japan; prosecutors have a degree of power unknown in other democracies. More than 99% of prosecutions brought to trial are successful prosecutions, and for the one percent of acquittals, the prosecutor has the right to appeal the verdict!

Forced confessions, and the convictions based on them, are the major problem with Japan's justice system today. Although convictions make the police look good and result in promotions and plaudits for prosecutors, they can destroy the lives, the reputations and

the families of law-abiding people. Is it acceptable to have so many people's lives damaged and dismissed as "collateral damage" ? Putting criminals in prison may or may not cause them to repent and rehabilitate; at least it prevents them from doing more crime for a while. **But every innocent person in prison represents a criminal—in some cases a murderer—who is still at large.**

Putting human rights at the center of the justice system will not only protect the unjustly accused; it will make Japan a safer place for us all.

### The *saiban-in* (lay judge) system

*"The introduction of the [lay judge] system in 2009 does not seem to have changed much." (16)*

If the *saiban-in* lay judge system leads to fewer convictions based on confessions and greater pressure on the police and prosecutors to produce real evidence, it will be a small step forward. The data available does not yet give a clear picture of how the new system has changed the conviction rate, but we can hope that one consequence of its introduction will be to focus many more citizens on how the justice system operates.

However, there is no need to wait; there is much more that could be done now to reform Japan's judicial procedures.

### How about human rights?

At present we have a system designed to produce confessions (which promise a 99% chance of conviction) as a priority; safeguards to protect innocent suspects do not carry enough weight. A human-rights focus is needed to change the emphasis.

Based on the specific concerns of the United Nations, some of the changes that the Japanese people urgently need as part of this process are:

- Independent oversight of police conduct toward suspects in detention;
- Access to legal council before and during interrogations;
- Videotaping of interrogations;
- Pre-trial bail;
- More lawyers and judges, to speed up trials. (Trials lasting years are common; some have lasted decades. The Sayama incident is still unresolved after more than half a century.) (17)
- Human rights training for police and prosecutors.

How many more innocent people in prison? How many on death row?

In 1984, a change in the law made retrials easier to obtain. Four men facing execution successfully applied; all of them were acquitted and released from death row. To stem a surge of further applications, the rules were tightened back up in 1990.

Menda Sakae was one of those four men. He had spent every morning for 34 years wondering if he was to be executed that day. He claims police deliberately framed him for the crime by holding him upside down and beating him until he confessed. No concrete evidence was presented at his trial, so after his release he arranged to meet the prosecutor and judge, to ask how they felt about their professional conduct. One simply said, *gokurousama*. The other merely said, *yoku gambatta, na*.

Mr Menda publicly opposes the death penalty.

### The Guinness Book of Records (!)

In 2014—after DNA testing of evidence presented at his trial—Hakamada Iwao was finally released. He had spent 45 years on death row, earning an entry in the Guinness Book of Records as the world's longest-serving death row prisoner. (18) Although, according to law, he should have been hanged within six months of his sentence being confirmed by the supreme court, not one of the people who served as justice minister during those 45 years could bring themselves to sign Mr Hakamada's execution order. Presumably, after reading the report of his trial, it was clear to each of them that he had been framed by the police. Even one of the three judges at his trial in 1968, Kumamoto Norimichi, publicly claimed later that "*the evidence did not make sense*." However, as the most junior, he was pressured by his two *kohai* to support conviction. Judge Kumamoto, troubled by his conscience, resigned soon after and became a death-penalty opponent. Hear his testimony to the United Nations, with subtitles, on YouTube. (19)

As a result of years of isolation in cruelly harsh conditions—basically solitary confinement plus enforced immobility—Mr Hakamada started suffering from dementia many years ago. He is apparently unable to react meaningfully to his freedom. The government is now stalling on granting him the formality of the retrial he needs to clear his name, apparently to avoid further negative publicity and to avoid being obliged to pay him compensation for his lost lifetime.

The former boxer's story was dramatized in a Japanese language movie, *Box*, in 2010. The movie trailers are available, with subtitles, on YouTube. (20)

If more cases in which confessions were the main factor leading to prosecution were to be re-examined, how many *enzai* cases in total, and how many leading to the gallows, might

be uncovered?

*"There is a high possibility that some [death row prisoners] were executed in spite of being innocent . . . the total number of such cases in the past has not been small."*

**Dando Shigemitsu, former supreme court judge (1996)**

**The death penalty in Japan: cruel, inhuman *and* capricious**

The sadistic way that Japan treats death row prisoners and conducts their executions upsets even people who support the death penalty! (I have talked with several of them at the various talks and presentations I have given over the years.) Some of the more outrageous facts include:

*"Executions, which are carried out by hanging, are shrouded in secrecy. Family members are only informed about the executions after the fact. Death row inmates are held in isolation, without the possibility of communicating with other detainees. They can await their executions for months, sometimes years. Every day, at dawn, they count the steps of the guards in the corridors – if there are more [guards] than normal, it means that there will be an execution." (21)*

In 2006, Japan executed four people on Christmas Day, one of them a man so old and sick he had to be taken to the execution chamber in a wheelchair. It was suggested to me that the choice of day was a deliberate insult, as one of the four had converted to Christianity while in prison. Japan even continues to execute the mentally ill. (22)

At the time of writing (September 2017), Amnesty International is campaigning to save the life of Matsumoto Kenji, a man of low IQ (caused by Minamata Disease). Police declared him the main suspect after the actual murderer, his elder brother, committed suicide. Mr Matsumoto is now apparently completely delusional as a result of his experiences in police custody and on death row. (23)

*"Japan's retention of the death penalty and the way in which it is secretly carried out harms Japan's international image."*

**Sir Hugh Cortazzi, former British Ambassador to Japan (1980 to 1984)**

In fact, Japan's international image is now so tarnished that, when Ueda Hideaki, Japan's human rights envoy to the United Nations Committee Against Torture claimed, in June 2013, that Japan is "*one of the most advanced countries in the world*" on the issue of human rights, several diplomats could not suppress their laughter. The YouTube clip of

him repeatedly shouting “Shut up!” at his audience “went viral.” (24)

The death penalty in Japan: a lethal lottery

*“It can’t be undone now.”*

One of Kuma Michitoshi's defense lawyers on hearing of his client's hanging—  
conducted, as is usual in Japan, in secret and without prior notice to either the  
inmate or their attorneys.

In June 2009, Sugaya Toshikazu, aged 62, was released from prison after retesting of DNA evidence showed he did not commit the murder in 1990 that he had been sent down for (the Ashikaga Case). In October 2008, Kuma Michitoshi, aged 70, was executed for a double murder committed in 1992 (the Iizuka Case). The same DNA test—which is now known to be unreliable and is no longer used—had been the most important factor in convicting both men. (25)

Throughout his trial and appeal, Mr Kuma had consistently protested his innocence, and it is widely believed that retesting with modern methods would have confirmed this. Regrettably, his request for retrial had already been turned down by the Fukuoka District Court (the same court that originally convicted him), clearing the way for the justice minister at the time, Mori Eisuke, to sign his death warrant. Mr Kuma's family posthumously applied for a retrial to clear his name; this was also refused. (26)

I believe that a retrial for Mr Kuma was refused out of concern that it would have overturned the verdict, thus seriously damaging public confidence in the justice system.

Why does Japan retain the death penalty?

The usual reasons that the government and successive Justice Ministers give for retaining and using the death penalty are that it is necessary to maintain public order, and that a large majority of the population demands it. However, neither of these claims survives scrutiny.

Effective deterrent or shameful secret?

If the death penalty is to work as a deterrent to violent crime and murder, don't people need to know about it? In Singapore, prisons and schools cooperate in organizing visits which aim to deter young people from criminal behavior. In Japan, however, it was not until November 1998 that the ministry started informing the press after an execution had taken place, and several years later that they started releasing the names of those

executed. Hangings are still usually carried out the day before a public holiday to minimize press coverage; a further aspect of this contradiction.

### What crime wave?

While the majority of the civilized world progresses away from violence and judicial killing, Japanese courts are moving in the opposite direction. During the first two decades of the 21st century, they have continued handing down death sentences, and most government justice ministers have continued signing permission for the executions. (There was a short hiatus between July 2010 and March 2012 when the DPJ was in government.)

This is despite the fact that the country's rates of murder and attempted murder, according to National Police Agency figures released in January 2013, had been falling for several years. (27)

If the government really believes that death sentences and executions, despite the secrecy, are the cause of the low crime rate, why do they let so many convicted criminals languish on death row? Their number is growing year by year.

See Figure 2.

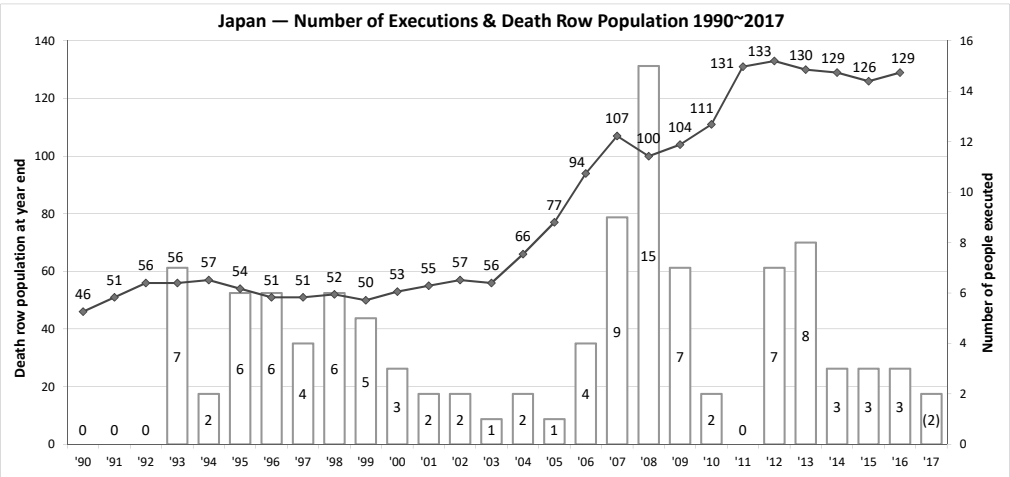


Figure 2

### For the souls of the dead ?

I have been told that many Japanese people believe that the soul of a murdered person cannot be at peace until their killer is executed, but this idea itself contains the seeds of an argument for abolition. When the state kills someone, a large number of people are

necessarily coerced into taking part: police, prosecutors, judges, prison warders, the doctor who confirms the death, and more. Execution chambers in Japan are set up so that several prison warders simultaneously press a button to release the trapdoor; only one of the buttons is operative. (The Tokyo execution chamber has three; Osaka has five.) Each warder can choose to believe that one of the others was responsible for the drop. But what about the soul of the deceased detainee?

### The overwhelming support of the Japanese people?

*"Opinion polls show over 80% of respondents in favor of retaining the death penalty,"* claims the government. This is technically correct, but highly misleading; it is only true of their own, skewed opinion polls.

A recent academic work, *The Death Penalty in Japan: Will the Public Tolerate Abolition?*, looked closely at the issue of public support, asking the question, *"is it real and robust?"* The work analyzed the government polls and criticized their objectivity, concluding that the oft-quoted 80% figure is not real:

*"Problems include the wording of the question[s], the over-representation of retentionists ... and the inability to capture the substantial number of people who were undecided or lacked strong views." (28)*

The same work also invited a cross-section of the public who expressed views for, against and undecided about the death penalty to take part in an awareness-raising exercise; they were exposed to new information about the death penalty in Japan, and given the chance to discuss the topic with people holding a different opinion. The results revealed that the public support which exists is not robust either:

*"There is room for the Japanese government to exercise leadership to abolish the death penalty. The likelihood of abolition meeting strong resistance by the general public is low". (29)*

Its author, Sato Mai, is clear about Japan's obligations:

*"Japan is not bound by international human rights treaties to abolish the death penalty immediately . . . However it is a duty of the state under the International Covenant on Civil and Political Rights, which Japan ratified in 1979, not to "delay or prevent the abolition of capital punishment" (Article 6 (6), ICCPR). [Nearly 40] years on from the year of ratification, it is time that the Japanese government started to take its obligation seriously, and to show the international community*



*that they are not merely following public opinion, but are actively pursuing ways in which to achieve abolition." (30)*

We should note that in almost every case in which the death penalty was abolished, it was not an electoral issue, it was done by the government of the day without a referendum, and although majority opinion was often in favor of retention, this view was not strongly held.

## Conclusion

Until Japan fixes its “justice” system—so clearly broken that it draws criticism from the Japanese Federation of Bar Associations, the United Nations Committee Against Torture, foreign diplomats, large sections of the overseas press and former detainees who choose to speak to the Japanese press and public—Japan should immediately impose a moratorium on executions.

The risk of killing more innocent people is real, and much too high.

## References

- 1) A. C. Grayling, *Towards the Light* [Bloomsbury 2007] (p 243)
- 2) deathpenaltyinfo.org (2017)
- 3) www.amnesty.org (2017)
- 4) deathpenaltyinfo.org (2017)
- 5) deathpenaltyinfo.org (2017)
- 6) en.wikipedia.org/wiki/List\_of\_miscarriage\_of\_justice\_cases
- 7) <http://www.law.umich.edu/special/exoneration/Pages/about.aspx>
- 8) ibid
- 9) Byung-Sun Cho, "The Death Penalty in South Korea and Japan: 'Asian Values' and the debate about Capital Punishment." in *Capital Punishment: Strategies for Abolition* Eds. Peter Hodgkinson and W.A. Schabas [CUP 2004]
- 10) K. van Wolferen, *The Enigma of Japanese Power* [Macmillan 1990] (p 244)
- 11) David T. Johnson, *The Japanese Way of Justice* [OUP 2002]
- 12) *Japan's Substitute Prison System Shocks the World* (2008)
- 13) [www.refworld.org/publisher,CAT,JPN,51dfe6614,0.html](http://www.refworld.org/publisher/CAT/JPN,51dfe6614,0.html)
- 14) Philip Pons, Le Monde, 20th March 2013

- 15) Private telephone conversation with the author, 2009.
- 16) Philip Pons, op cit.
- 17) [www.imadr.org/sayama/](http://www.imadr.org/sayama/)
- 18) [www.theguardian.com/world/2014/mar/27/japanese-man-freed-death-row-retrial](http://www.theguardian.com/world/2014/mar/27/japanese-man-freed-death-row-retrial)
- 19) [www.youtube.com/watch?v=r0qEdSTHFFY](http://www.youtube.com/watch?v=r0qEdSTHFFY)
- 20) [www.youtube.com/watch?v=tc9TkyFDxOs](http://www.youtube.com/watch?v=tc9TkyFDxOs)
- 21) Philip Pons, op cit.
- 22) "Japan continues to execute mentally ill prisoners," Amnesty International, 10 September 2009, <http://bit.ly/2fhbor7>
- 23) <https://amnestytaunton.wordpress.com/2016/03/09/making-a-murderer-and-matsumoto-kenji-the-truth-can-be-stranger-than-fiction/>
- 24) [www.huffingtonpost.com/2013/06/13/hideaki-ueda-japan-shut-up-video\\_n\\_3437187.html](http://www.huffingtonpost.com/2013/06/13/hideaki-ueda-japan-shut-up-video_n_3437187.html)
- 25) [www.nytimes.com/2010/08/14/world/asia/14japan.html?mcubz=0](http://www.nytimes.com/2010/08/14/world/asia/14japan.html?mcubz=0)
- 26) [www.japantimes.co.jp/news/2014/03/31/national/fukuoka-court-wont-reopen-1992-murder-case-of-hanged-inmate/](http://www.japantimes.co.jp/news/2014/03/31/national/fukuoka-court-wont-reopen-1992-murder-case-of-hanged-inmate/)
- 27) [www.japantoday.com/category/crime/view/crime-stats-down-across-japan-in-2012-says-npa](http://www.japantoday.com/category/crime/view/crime-stats-down-across-japan-in-2012-says-npa)
- 28) Sato Mai, *The Death Penalty in Japan: Will the Public Tolerate Abolition?* [Springer VS, London 2014] (pp 189/190)
- 29) *ibid* (p 179)
- 30) *ibid* (p 193)