

Mr. Mitchler

World Issues 12

28 May 2018

Is the Abolition of Capital Punishment Necessary in Japan?

Death penalty, or capital punishment, is the punishment by death for a crime. While the international trend is toward the abolition of capital punishment, Japan is one of the few developed countries that still maintains it. Most people may know Japan is one of the only 2 countries with death penalty in G8, but not the fact that in Japan, instead of using gun, execution take place in from of hanging. The process is not transparent. Inmates are often told several hours before the execution, and they will be brought to the execution ground and be hung to death. Their family won't being notified until the inmate has already died. This leads to an international discussion on their violation of human rights, and therefore, the debate on death penalty within the country. Japan had a long history of capital punishment. At the very early days before 8th century, the penalty was first introduced as a combination of religion, philosophy and the state system. Later, Japan became the first country to ban it in the *Heian* Period (794-1185). The penalty, however, was brought back to Japan during *Tokugawa* Period (1603-1868), and has kept being used even after westernisation until now. Under the pressure of the international trend, in the recent years, debate about capital punishment has been going on in Japan, while the government, however, still insists on continuation. Is it necessary to ban death penalty? Or is it better to maintain it?

Some argue that capital punishment is needed since abolition of the death penalty prioritizes the life and rights of the murderer over those of the victim and therefore does not meet the requirements of justice. In addition, it's part of their culture. Over 80% of citizen and even the government support it. However, it may be necessary to abolish capital punishment in Japan as in

fact, death penalty isn't really effective in reducing crime. Moreover, the tendency in both Japan and the globe are now getting closer and closer to abolition.

Recently, there is a tendency towards the abolition of capital punishment in Japan caused by both domestic and international trends. Within Japan, the concerns about the error during judgement are growing. In 2011, According to a survey done by the Guardian, About 46.6% of Japanese people worried about the errors in the legal process (Nippon.com). One of the major concerns of death penalty is that it may leads to the death of innocent people as a result of the miscarriage of justice. In the US, for instance, 141 death row inmates has been released from the jail since 1997 (Laville). The Criminal Cases Review Commission in the United Kingdom, established in 1997, helped to carry about many retrial. Among all those cases, 320 of them were acquitted (Laville). Why are these statistics important to Japan? Misjudgment could take place anywhere, and thus, if a considerable amount of people are wrongly sentenced to death in a country, then the same thing would happen in other countries as well. However, Japan, a country without similar system to retrial these cases, may have similar number of misjudgment, but much less amount of ones proven to be wrongly judged. However, there are still some cases took place, and they highly caught people's eye. In Japan in 2014, Iwao Hakadama, a man wrongly judged of a murder by court, was released after 40 years being sentenced to death and 48 years staying in jail. This, however, is not the only case of misjudgment taking place in Japan. In 1980s, 4 inmates were found innocent after they had already been executed. Since such cases keep happening, concerns of the risk of keeping capital punishment, which would lead to the death of innocent people, have been growing and spreading throughout the country. This trend could be seen in the number of execution in recent years, which, from the early *Meiji* Period, become less and less. Since 1873, the number decreased to less than 1,000, and it's never higher than 200 after 1877. After 100 years, only less than 20 penalty is executed. In 2011, there was 0 execution in Japan (Schmidt 35). As a result of the low frequency, in

2016, 124 inmates were in jail waiting for execution. The decreasing number of execution carried out presented a downward tendency in the executing inmates.

In fact, most of Japanese still support capital punishment. A poll done by Manila Bulletin in 2005 indicated that 80.3% of Japanese preferred maintaining death penalty in order to keep security and order in the society. Nevertheless, 37.7% supposed that abolition was acceptable if a new system life imprisonment without parole could be established. In many European countries which have abolished death penalty, offenders who committed capital crimes are often sentenced to life. Such system seems reliable and trustable to people, which could be seen in the poll.

Outside of Japan, an international of abolition trend has been growing, in 2011, among total 249 countries around the world, only 21 of them carried out execution, whilst 140 of them had officially abolished capital punishment. The number of countries getting rid of death penalty has been decreasing steadily until recently. In 2015, 4 countries, which are Fiji, Madagascar, the Republic of Congo and Suriname, officially banned capital punishment, and another 4 legislated for abolition in 2016 and 2017. Not only individual countries, but different IGOs such as UN and EU are trying to promote abolition in the world. In 2007, 104 member states in the UN voted for promoting abolition, whereas the increased to 111 in 5 years (Charbonneau). The promotion is mainly done through advices and covenants. In June 1979, Japan ratified the International Covenant on Civil and Political Rights (ICCPR). Under Article 6 of this covenant, in which countries should only apply death penalty to the most serious crimes. Furthermore, the EU had a continuous political conversation focusing on human rights with Japan since 1991, and EU kept trying to convincing Japan as banning death penalty is one of their prior goal. EU and UN have been trying to convince Japan through holding conferences around the world. For example, a conference on the abolition of the death penalty was held in Tokyo in 2012 by the United Nations' Human Rights Council. In addition, abolition is also promoted using international statutes. On July 1, 2002, the Statute of the

ICC prohibit capital punishment, which led to the great change in international criminal law. Japan, as a member of these IGOs, should compromise to these statutes at some level. All these organisations keeps putting effort to encourage abolition in Japan, which could be seen as a large international pressure.

Most people tend to mention the deterrence of capital punishment when they are debating on whether it should be banned or not. While most countries preserving the penalty claimed that it does deter crimes, actually, there is no present evidence indicating this is true. Many studies and statistics have pointed out this fact. In America, states that have prohibited death penalty have lower criminal rate. Among the 25 states with higher criminal rate, 20 of them have death penalty. Whilst among another 25 states with relatively low criminal rate, only 11 of them still keep capital punishment (Tures). It is obvious that states without capital punishment have less crimes, which indicates that there's no absolute relationship between low criminal rate and death penalty.

Experts have done a considerable amount of research on this topic, and most of them have a negative comment on the effect of death penalty on deterring crime. Many criminologists and philosophers argued that murderers committed crime due to their natural passion and desire. For instance, a legal scholar, Mihara Kenzô, suggested that people who committed capital crimes such as homicides, are motivated by their desire to complete the crime. Most of them don't actually think about what the punishment is going to be. Death penalty has subtle influence on potential criminals, not only since the motivator of crime, but also most inmates are executed long after the crime is committed. In 2015 in the US, for example, about 14,000 homicides were committed while only 35 execution happened (Donohue). The huge gap between the number of crimes and that of executions clearly shows that executions are likely to take place long time after the crime is committed. It is not convincible that people would keep concerning about what's being going on with one case, and thus, won't know who is executed and be affected by that. In fact, most experts have the same

opinion on this debate. In a poll done by Radelet L. Michael in 2009, in which the world's top criminologists were asked about their opinion on this question, many of them showed a question mark in whether capital punishment have deterrence on crimes or not. 88.2% of the polled criminologists believed that death penalty couldn't be a deterrent. Less than 10% of the experts believed the effect of capital punishment is greater than the deterrence of long-term imprisonment. Most of them supposed that the influence of life imprisonment is far greater than that of capital punishment. This apparently shows that a majority among people who have studied this topic for years agreed on that capital punishment had little effect on deterring crime.

The same fact could be seen the real world as well. A study done by Dr. Lamperti, a professor in Dartmouth College, pointed out that in South America, as an example, the banning of capital punishment didn't lead to higher criminal rates. In Canada, the criminal rate has fallen for about 25 percent after abolition (Lamperti). After death penalty was abolished in the United Kingdom, though the homicide rate in the country rose up, yet other crimes that are not capital increased as well. There's no evidence that is able to clearly show that capital punishment does deter crime. In In a study from the United Nation, it is concluded that: "It is generally agreed that the data which now exist show no correlation between the existence of capital punishment and lower rates of capital crime." (Lamperti)

As the debate of death penalty keeping going on in Japan, the country is likely to ban capital punishment in the future though a tremendous amount of its citizens showed supports to death penalty. In Japanese, a growing voice requesting no capital punishment is more and more obvious, together with the continuous pressure from the international community. Meanwhile, many studies from the western world have proved that death penalty doesn't deter crimes. The trend of banning this punishment in the globe keeps growing, which seems likely to lead Japan to eventually prohibit capital punishment. Until today, even more than half of the countries in the world have gotten rid of

death penalty, it is still a highly debated punishment. Should a country kill its people? Should a person pay his life for his guilt? Philosophical questions never get an answer, yet legal debates do. Some people say they don't care about what happened in other countries, but they actually should. In the time of globalisation, every country is affected by one another. Japan, for example, is affected by international community on its executions. If one's country has debates on death penalty, then he should care about the debate going on in Japan since every decision Japan made would affect the perspective of his country.

Work cited

“80% In Japan Favor Death Penalty - Survey.” *Manila Bulletin*, 21 Feb. 2005,

www.questiaschool.com/newspaper/1G1-128960287/80-in-japan-favor-death-penalty-survey.

Charbonneau, Louis. “UN committee urges death penalty halt, US opposed” *Reuters*, reuters.com, Nov 12. 2010, www.reuters.com/article/idINIndia-52853120101112. Accessed 2 May, 2018.

“Death penalty 2015: Facts and figures” *Amnesty International*, amnesty.org, 6 Apr. 2016, www.amnesty.org/en/latest/news/2016/04/death-penalty-2015-facts-and-figures/. Accessed 2 May, 2018.

Donohue, John, et al. “There's No Evidence That Death Penalty Is a Deterrent against Crime.” *The Conversation*, Aug 8. 2015, theconversation.com/theres-no-evidence-that-death-penalty-is-a-deterrent-against-crime-43227. Accessed 2 May 2018.

International Federation for Human Rights. “The Death Penalty in Japan: A Practice Unworthy of a Democracy” May, 2003. tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/JPN/INT_CAT NGO JPN_38_9271_E.pdf. Accessed 2 May, 2018.

Lamperti, John. “Does Capital Punishment Deter Murder?” www.dartmouth.edu/~chance/teaching_aids/books_articles/JLpaper.pdf. Accessed 2 May, 2018.

Laville, Sandra. “Criminal Cases Review Commission must be reformed, say campaigners” *The Guardian*, theguardian.com, Mar 27. 2012, www.theguardian.com/law/2012/mar/27/criminal-cases-review-commission-reform-campaign. Accessed 2 May 2018.

McCurry, Justin. “Calls to abolish death penalty grow louder in Japan” *The Guardian*. 21 Sep. 2016, www.theguardian.com/world/2016/sep/21/calls-abolish-death-penalty-grow-louder-japan. Accessed 2 May, 2018.

Michael, Radelet L. “Do Executions Lower Homicide Rates?: The Views of Leading

Criminologists.” *Journal of Criminal Law and Criminology*, vol. 99, no. 2, 2009, pp. 489–508., scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=7323&context=jclc.

Sato, Daisuke. Iwahashi, Takuro. “Death by Hanging — How Executions are Carried Out in Japan” The Wrongful Conviction’s Blog, Feb 20. 2013, wrongfulconvictionsblog.org/2013/02/20/death-by-hanging-how-executions-are-carried-out-in-japan/. Accessed 2 May, 2018.

Schmidt, Petra. *Capital Punishment in Japan*. Brill, 2002.

“The Capital Punishment Debate in Japan.” *Nippon.com*, 15 Apr. 2015, www.nippon.com/en/features/h00101/. Accessed 2 May, 2018.

Tures, John A. “Does The Death Penalty Reduce The Murder Rate?” *The Huffington Post*, TheHuffingtonPost.com, 2 Dec. 2017, www.huffingtonpost.com/john-a-tures/does-the-death-penalty-re_b_13362760.html. Accessed 2 May, 2018.