

COMMENTARY | COUNTERPOINT

## Unpersuasive logic for death penalty in Japan

BY JEFF KINGSTON

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The death penalty in Japan is imposed in cases of murder, and robbery and/or rape leading to death. In such cases, capital punishment is not mandatory and is usually only imposed in cases of multiple killings, though since 2006 this criteria has not been strictly observed.

Over the past 10 years, there has been a significant increase in the number of death penalties handed down, rising from an average of five a year in the 1990s to 15 in 2004, 23 in 2007 and 17 in 2013.

Accounting for the upward trend, there appears to be an increased willingness by prosecutors to seek the death penalty, while retention of this practice is justified in terms of strong public support. Indeed, a 2009 government poll found 86 percent of respondents to be in favor of retaining the death penalty.

The government routinely invokes this high support rate to justify the death penalty. But given that public opinion opposed to government policy is routinely ignored — with regard to restarting nuclear reactors, for example — the authorities' apparent deference to citizen's desires regarding the death penalty is ripe for dissecting.

Mai Sato, a researcher at Oxford University's Centre for Criminology, ably conducts this dissection in her recently published book "The Death Penalty in Japan" (2014), and makes a strong case for abolition.

Rather than focusing on human rights, treaty obligations and international trends, Sato disputes the government's assertions about there being strong Japanese public support for the death penalty.

She finds that attitudes toward capital punishment are flexible depending on how the question is asked and in what context. In particular, she points out that the questions in the government's survey were crudely worded and designed to overstate support for the death penalty and downplay support for abolition. Moreover, retentionists often site a rising murder rate to justify their opinion when, in fact, it is stable.

When she conducted her own survey, with more neutral questions and more response

options, she found that support for the death penalty was far more ambiguous than the government acknowledges. Based on deliberative polling Sato found that those favoring retention often rely on misinformation and reconsider their views when they are provided with more accurate information and engaged in discussions about the death penalty.

Referring to her finding that the Japanese public is actually quite open to abolition, Sato told *The Japan Times*, “I am simply delivering ‘good news’ ... (that) the legitimacy of the Japanese criminal-justice system will not erode even if they abolish the death penalty.”

It seems clear that public opinion is a fig leaf for the government’s preference for retaining the death penalty, not its guiding light. Furthermore, by swathing the death penalty in secrecy, the government stifles debate — while by encouraging people to think that serious crime is increasing when it is not, officials are orchestrating a public opinion favorable to their agenda.

Sato argues that government and public support for retention is based on an unfounded belief that the death penalty acts as an effective deterrent — whereas numerous studies show that it isn’t.

While retribution also remains a strong motive for supporting the death penalty, Sato’s study explains that knowledge is a powerful countervailing force, suggesting that the way to abolition lies through cultivating a better-informed public. But that confronts a massive obstacle, as the government has a policy of keeping people uninformed by releasing very little information about the death penalty and spreading disinformation about it.

Sato concludes persuasively that the government would face little resistance if it abolished the death penalty, because it is not a key factor in public faith in the criminal-justice system.

Significantly, in light of Japan’s lay-judge system, in which a panel of three judges and five citizens act as a jury in capital cases, Sato’s survey found that fewer than half of those in favor of the death penalty declared they would actually sentence a defendant to death.

Following this 2009 lay-judge reform, however, the hybrid juries have issued 17 death sentences in 24 cases in which the prosecution demanded the death penalty. In those cases, six defendants were sentenced to life imprisonment and one was found innocent. One of those death sentences was overturned and commuted to life imprisonment.

Regarding this relatively new system in Japan, however, Sato expressed concern to *The Japan Times* that the lay judges are controlled by the professional judges. She also criticized a new provision allowing subjective input from victim’s relatives: “I think it’s a terrible system. Japan’s victims’ participation system goes further than European systems in the sense that not only can the victims express their feelings, but they are allowed to state their sentence preferences and the judges are *allowed* to take those into consideration.”

The current death-row population in Japan as of January 2014 is 131, including six women, six non-Japanese and 12 inmates whose sentences were changed from life to death on appeal. In Japan, if prosecutors are unhappy with the verdict or the sentencing they can appeal.

In 2013, eight death-row inmates were executed, with two hangings in February, three in April, one in September and two in December, all authorized by Justice Minister Sadakazu Tanigaki. Since 1993, there have been a total of 99 hangings in Japan.

Death-row inmates are locked up in toilet-size isolation cells, and are deprived of all contact with the outside world as they wait an average of seven years — but sometime decades — for their date with the noose. Decisions on when to proceed with executions are arbitrary, and they are swiftly carried out in secret with only a few hours' prior notification to inmates. In most cases, relatives are informed only after the fact.

Sato's book exposes deep flaws in the government's logic for retaining the death penalty and demonstrates that the Japanese public would go along with abolition if the government chose to do so.

Japan's judicial authorities have remained stubbornly impervious to widespread international condemnation from the United Nations, the Council of Europe, human-rights groups and various domestic groups — always playing “public opinion” as its trump card to retain a barbaric system.

Now, though, Sato has called their bluff and exposed this excuse as disingenuous. If officials are really worried about maintaining faith in the criminal-justice system, they should stop misrepresenting public opinion about a practice that is haunted by doubts about miscarriages of justice.

Keeping the gallows busy is based on the assumption that mistakes are not made and the guilty get their just desserts. But over the past few decades, more and more cases of wrongful convictions have come to light based on coerced confessions, faulty evidence and other judicial abuses and shortcomings.

And, in the final analysis, it is the virtual certainty that innocent people are waiting to be executed that indicts the death penalty — because there are no remedies for the dead.

The March 27th court ruling that freed death-row inmate Iwao Hakamada from detention after 48 years, and ordered a retrial, is welcome news. The police, prosecutors and judges who railroaded him in 1968 should be held accountable for this unconscionable travesty of justice.

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