

In Support of Capital Punishment

Capital punishment is one of the oldest and most fundamental of criminal punishments. It has been practiced in nearly every human civilisation, from ancient Egypt where criminals were drowned in the Nile to modern day China where one is more likely to be shot or injected with lethal substance. In the last century, however, capital punishment has been abolished in many countries worldwide and it has been criticised as being inhumane. Many global organisations, such as Amnesty International and the European Union, now call for the global eradication of capital punishment, and support for this is spreading. More and more countries are abolishing capital punishment globally and countries retaining capital punishment have now become a minority. In contrast to this global trend, Japan is one of the few economically advanced countries still firmly against abolishing capital punishment, practicing it regularly alongside countries such as the United States, China and Saudi Arabia. While international pressure from both governmental and non-governmental organisations has increased for Japan to abolish its maximum punishment, public opinion remains strongly against abolition. So which side should the government of Japan take? In this paper, I will compare both sides of the argument, paying special attention to the legal nature of the situation in Japan and who is entitled to make the decision whether to abolish capital punishment or not.

In March 2012, Amnesty International, a Non-Governmental Organisation campaigning for human rights, published a report detailing the current global situation concerning capital punishment. In the report, only 58 countries are considered to be “Retentionist” and carry out death penalties while 140 countries are called “Abolitionist” and have abolished capital punishment in law or in practice (“Death Sentences and Executions 2011”). Amnesty International goes on to argue that only 21 countries out of the 198 countries carried out executions, “a drop of more than a third in the last decade” (“The Death

Penalty in 2011”). This shows a strong trend worldwide against capital punishment and Japan is often singled out as one of the countries going firmly against this inclination.

At the same time, international organisations such as the European Union have repeatedly called on Japan to abolish capital punishment. On 10 October 2012, in a message issued on the World Day against the Death Penalty, ambassadors representing the EU, its 27 member states and Croatia issued a collective statement. In this statement, the ambassadors requested Japan to “consider seriously an immediate moratorium on executions to allow a comprehensive public debate on this issue” noting that “the global trend is toward abolition, with more than two-thirds of the countries around the world either having formally abolished capital punishment or stopping its application”. They also added, “the EU considers the death penalty a violation of human dignity that does not deter violent crime” (“EU Calls for Japan to Abolish Capital Punishment”). This message is notable in that the EU has gone as far as to criticise Japan directly for the first time on the topic of capital punishment, a move that could be taken as interference with domestic matters and shows how much weight the EU places on this problem.

Similarly, the United Nations has also repeatedly called for eradication of the death penalty. The Second Optional Protocol to the International Covenant on Civil and Political Rights banning capital punishment within the borders of member states was created in 1989 and has been ratified by 75 member states of the UN (“Second Optional Protocol”). In recent years, Italy and Chile have proposed a global moratorium on the death penalty, supported by a number of Non-Governmental Organisations and other countries, culminating in a resolution passed by the General Assembly. Resolutions concerning this topic have been passed in 2007, 2008 and 2010, with just 41 states going against the motion in 2010 (“UN resolution”). Despite both the UN and the EU applying political pressure, the Japanese government strongly refuses to abolish capital punishment.

From the above paragraphs, the strengthening international support for the abolition of capital punishment is clear. However, it must be remembered that the issue of capital punishment is a purely penal problem and can therefore be considered internal affairs of Japan. As a sovereign country, no other country should be able to interfere with Japan's domestic affairs even if the life of a criminal is at stake. If international trends cannot change the law in Japan, what can?

In an opinion poll conducted in 2009 and published in 2010 by the Cabinet Office, known as the Naikaku-fu in Japanese, popular support for capital punishment was reached the highest recorded level at 85.6% with just 5.7% supporting abolition. Yet, this was not a one-off. Since 1956 when the polls were first conducted, retentionists have always accounted for more than 50% of those interviewed with voices calling for abolition never rising above 20%. In recent years support for capital punishment has risen, from 66.5% in 1990 to 85.6% twenty years later ("Shikeiseido"). This is significant as it shows that support for capital punishment has been consistent for more than 50 years, with no prospect of support for abolition increasing in the near future. Strong public opinion becomes problematic when it comes to changing the status quo and abolishing capital punishment. This would mean destroying a system that most citizens view as being adequate and replacing it with one that has little to no support at all. This is something that would go against the democratic principles that make up Japan and is not something that should be recommended.

Article 1 of the Japanese Constitution proclaims that "The Emperor shall be the symbol of the State and of the unity of the People, deriving his position from the will of the people with whom resides sovereign power" ("The Constitution of Japan.") making it clear that Japan is indeed a democratic country. Japan is a parliamentary, representative democracy where the citizens choose politicians to represent their constituency in the Diet. Therefore, it is evident that the Japanese people have the right to decide state policies. This is even more

applicable on domestic matters such as capital punishment as compared to diplomatic problems where the positions of other countries must be taken into account.

Even so, criticism of justifying capital punishment with the use of opinion polls remains. The greatest of which is that common citizens do not have enough information or ability to make a decision on this complex topic. One of the greatest example where the general population were misled into making wrong political choices is in interwar Germany, where effective Nazi propaganda caused the German populace to vote for Hitler and Nazism, meaning Hitler was able to become leader of Germany legally and democratically. In hindsight, if German citizens had been better informed of the Nazis' true intentions, they would not have been able to assume power as easily as they did in the early 1930s.

In spite of this, democracy, although it must be separated from demagoguery, should still dictate the way Japan progresses. The consistent and stable support for capital punishment shows that it is not just a simple trend but also a strong belief in the system, rooted deeply in the heart of many people who believe in equal retribution for crimes committed. Allowing this decision to be made by any other group rather than the entire Japanese population also creates further problems. Refusing to listen to the majority believing the minority to be right contains the risk of moving towards an oligarchy where the intellectual and economical elite decide the policy of the state. History points out to us that oligarchy hardly ever succeeds, with the sole exception of the ancient Roman Senate that was eventually weakened by Roman Emperors. This is not a route that Japan should take.

In the end, the problem of capital punishment settles down to a simple question: who decides what is right and what is wrong. In the current circumstances, where there is no omniscient human being that can decide for citizens of this country what is right and what is wrong, it remains up to each individual to make this choice consciously and with care. Therefore, the people of this country must decide what is right and what is wrong. All

Japanese nationals have the right and indeed the duty to decide the course that this nation takes. If the decision reached by the people of Japan after careful deliberation is that capital punishment should not be abolished in this country, then that is what is right. There is no higher authority that is qualified to make this decision, even if the choices the people make today may be wrong, when viewed in hindsight. This is democracy. It may have some flaws but no system is flawless, a notion perfectly summarised by Winston Churchill who once famously said, “Indeed, it has been said that democracy is the worst form of government, except for all those other forms that have been tried from time to time” (“DEMOCRACY”).

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