Japanese Culture and the Defense of Capital Punishment: An Alternative View

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Introduction: The Deadly Use of Culture

Culture is often cited by Japanese Ministers of Justice in support of capital punishment and in response to international pressure to end this policy. In 2005, a former Minister of Justice, Hatoyama Kunio, maintained that capital punishment is an indigenous system deeply rooted in Japan's own history and culture.[1] Earlier, at a seminar on "Judiciary and Human Rights in Countries that Hold Observer Status with the Council of Europe" held on May 28 and 29, 2002, the Minister of Justice at the time, Moriyama Mayumi, claimed that capital punishment is deeply embedded in the Japanese view on guilt. According to her, it is represented by a concept, *shinde wabiru*, meaning atonement for one's crime or shameful behavior by killing oneself.[2] Referring to this concept, the Japanese government has proclaimed that capital punishment functions as victim satisfaction. Government officials frequently use the phrase *higaisha kanjō wo kōryo shite* (respecting the feelings of the victims' bereaved families) and cite a pro-death-penalty victim lobby's claim that it is the "responsibility" of murderers to atone for their crimes through death.[3] Furthermore, Sakata Michita argues that the Japanese have nurtured this culture over the past 2,000 years: abolishing capital punishment would amount to cultural denial.[4] This means that outside parties can have no say.

The main purpose of this paper is to critically examine the validity of the government's justification for capital punishment on cultural grounds. Through reconsidering those cultural features claimed to be associated with capital punishment in Japan, it will explore whether or not the cultural narratives of the policy elite have influenced ordinary people and scholars alike to believe that Japan's capital punishment policy is domestically and culturally determined. Firstly, it will investigate if the concept of *shinde wabiru* has been widely accepted as a social norm and supports the retention of capital punishment in Japan. After recalling an occasion in which an act of *shinde wabiru* was committed, it will present conceptual and methodological problems regarding the application of this cultural value to the justification of capital punishment. It will also examine the divergence between pro- and anti-death-penalty victim lobbies in their views of this concept.

Secondly, it will clarify the source of public resistance to the abolition norm. It will investigate the degree to which Japanese consciousness on human rights and legal questions has contributed to public pro-death-penalty sentiment or resistance to the abolition of capital punishment. Presenting the characteristics of the largest

anti-death-penalty NGO in Japan, Forum 90, it will then argue that public resistance does not appear to stem from cultural features but from a lack of sympathy towards the activities of domestic anti-death-penalty groups. Finally, the conclusion will re-examine the role of culture in Japan's capital punishment policy.

2. Capital Punishment as Social Justice and Victim Satisfaction Reconsidered

In order to investigate the government's claim that capital punishment is deeply embedded in the Japanese view on guilt, represented by the concept of *shinde wabiru*, this part will examine: (1) whether or not such a social norm exists in Japanese civil society with an overwhelming public consensus; and (2) whether the general public and the victim lobby believe that capital punishment functions as victim satisfaction.

The Social Norm on Atonement through Death, "Shinde Wabiru"

General Nogi Maresuke and his wife committed seppuku following the state funeral of Emperor Meiji in 1912. His suicide note revealed that it was *junshi*—to commit seppuku upon the death of the lord—in order to expiate his disgrace in two main events: the Satsuma Rebellion in 1877 in which he lost the imperial banner to the enemy, and a battle in the Russo-Japanese War in 1904–05 where 56,000 lives were lost, including his two sons. In the siege of Port Arthur, although General Nogi commanded approximately 90,000 soldiers, the Commander in Chief, Ōyama Iwao, sensed that defeat was imminent under Nogi's leadership. Therefore, Ōyama appointed Kodama Gentarō in his place as Chief of General Staff of the Manchuria Army at the end of November 1904.[5] Since this decision was not announced to the public, Nogi was celebrated as a national hero following Japan's victory.[6] He took this as an undeserved honor, and a sense of shame made Nogi plead that he deserved death on each occasion when he was granted an audience with the Emperor.[7]

However, his death was not permitted since the Emperor knew that Nogi genuinely meant to atone for his disgrace. Emperor Meiji told Nogi to live at least until his (the Emperor's) death.[8] On the day of the state funeral of Emperor Meiji in 1912, Nogi committed seppuku with his wife in order to atone for his disgrace. Nogi's case drew worldwide popular and scholarly attention, centering on the the seppuku ritual and the cultural idea of *shinde wabiru* (to atone for one's failings through death). Some scholars argue that this cultural value is still accepted as a social norm in contemporary Japan and relate it to the Japanese view on criminals and death row inmates. For example, Komiya Nobuo claims that "Japan is not a heaven for offenders in terms of rehabilitation because the reintegrative function of Japanese society is limited."[9]

According to Komiya, self-discipline is a virtue admired in Japan, and this has been a key factor not only in maintaining Japan's exceptionally low crime rate but also in "expelling" criminals from society.[10] For example, arguments have been advanced that schools in Japan are inhospitable to original or critical thinkers since group harmony is held in high esteem, causing pupils to learn to "restrain selfish behavior through various small group activities [… and to] continuously monitor […] one another's behavior within the group."[11] Fearing "deprivation of membership,"

pupils become submissive to authority, and this surveillance system also works in society even after they grow up. In the meantime, "one who neglects [… this repressive rule] is likely to be labeled as a social misfit and gradually excluded from one's group."[12] In other words, whilst self-control makes the group members' bond stronger and contributes to building of a crime-free society, once they become criminals it is difficult for them and their families to return to society unblemished.

These "exclusive" attitudes of the public to offenders may imply that the Japanese public appreciates the norm of *shinde wabiru* to some extent. However, three main concerns are aroused by Moriyama's claim that the capital punishment system has been underpinned by such a concept in the modern period. First, the seppuku ritual is a particular historical and political event linked with a particular set of sociological phenomena, and Nogi's case was also a symbolic suicide, which aimed at appealing to the public with the "samurai spirit"[13]—a sentiment not common in present-day Japan. Secondly, a fact overlooked by the Ministry of Justice, the pro-death-penalty lobby and the general public is that spontaneity is required when an act of *shinde wabiru* is expected. This action is considered meaningful only when it is committed by people on their own initiative after a feeling of remorse has been generated from the bottom of their hearts.[14] If it is conducted by the state's authority on the date that the ministry bureaucrats choose at their convenience, it is a mere state killing.

Thirdly, one should note that the existence of another Japanese proverb, *tsumi wo urande hito wo uramazu* (condemn the crime rather than the criminal), has been ignored in the government's justification for capital punishment. If the government proclaims that capital punishment is deeply embedded in Japanese culture, it also needs to account for that proverb, which contrasts with *shinde wabiru.* The following section will further investigate this issue and introduce arguments by both pro- and anti-death-penalty victim lobbies. It will summarize the main claims from both lobbies about how criminals should atone for their crimes, and critically examine how frequently the concept of *shinde wabiru* can be found in death sentences or in the popular media as a widely accepted social norm.

The Pro-Death-Penalty Victim Lobby

In relation to this concept, it is also important to examine the pro-death-penalty lobby's claim that only capital punishment can bring social justice to the bereaved families. The Hikari case is a high-profile murder incident where the victims' bereaved family adopted such a position. On April 14, 1999, an 18-year-old male broke into a house in Hikari city in Yamaguchi prefecture. The offender, whose name was withheld until 2012[15] since he was a minor at the time of the crime, raped and strangled a 23-year-old woman, and strangled her baby daughter. What made this case distinct from other juvenile crimes was that: (1) Motomura Hiroshi, husband and father of the victims, called for the death sentence vocally; and (2) Yasuda Yoshihiro, an anti-death-penalty lobby activist and defense attorney for Asahara Shōkō—leader of the Aum Shinrikyo cult responsible for the Aum gas attack on the Tokyo underground railway in 1995[16]—joined the defense team in the Hikari case from March 2006. The media coverage of these two helped create a simplistic picture of a "for or against" argument on capital punishment amongst the public. As

Hamai Kōichi and Thomas Ellis[17] argue:

> Motomura had a very charismatic persona as the grieving husband and father that was well attuned to TV chat shows and tabloid styles of approach. In front of TV cameras and reporters, he has often produced emotional attacks on offenders and argued that he would kill the murderer [… by himself], if he were released.

Whilst Motomura's claim as a victim gained much sympathy from the public,[18] the argument of the defense team, which comprised 20 veteran attorneys including Yasuda, sounded poor and did not garner support from the public towards the offender. The team argued that both victims died accidentally and that the offender even tried to revive both of them by raping the dead woman and leaving the dead baby in a cupboard so that *Doraemon*, a robotic cat manga character, could make any dream come true or would do something to help them.[19] The disclosure of the provocative letters that the offender wrote about the victims and Motomura also made the public doubt the credibility of the defense team's claim, and this murder case left an extremely negative image of the anti-death-penalty movement in Japan.[20] It was only *Hōsō Rinri Bangumi Kōjō Kikō* (the Broadcasting Ethics and Program Improvement Organization) that vocally claimed that the excessive media coverage from the victims' perspective had produced an unbalanced view of the case.[21]

The defendent in the Hikari case was initially sentenced to life imprisonment considering his age and the possibility that he could be rehabilitated. However, right before the ruling on April 22, 2008 when he was sentenced to capital punishment at the age of 27, Motomura stated, "It's his responsibility to let society know about the consequences of killing someone."[22] He implied that capital punishment is necessary for social justice and to deter further serious crimes. Motomura's campaigns were not strictly about stirring up pro-death-penalty sentiment. His appearance in the media appears to have contributed to making other victims' bereaved families become publicly visible, and brought several changes to legal provisions.[23]

Firstly, cooperating with Okamura Isao, an attorney whose wife was murdered on October 10, 1997, Motomura established an NGO, *Zenkoku Higaisha no Kai* (the National Network for Victim Support), on January 23, 2000. Motomura spoke on behalf of victims' bereaved families who could not express their feelings openly, and *Hanzai Higaisha Tō Kihon Hō* (the Basic Act on Crime Victims) was also enacted in order to protect their rights in November 2004. In the meantime, it appears that such victim-driven activism was also strategically used by the Public Prosecutor's Office to amend the Juvenile Law in November 2000 and May 2007. In particular, the amendment of the Juvenile Law in 2000 was the first since World War II,[24] and it lowered the minimum age for sending minors to reformatories from 16 to 14 in 2000 and from "14 to around 12 (in 2007), stirring concerns among lawyers and legal experts that tougher penalties might infringe on the rights of minors and might not lead to a reduction in juvenile delinquency."[25] Harsher punishment of juvenile offenders was thus legalized as if the law was influenced by the growing power of the victim lobby.

By contrast, when the Supreme Court rejected an appeal by the defendant and the death sentence was upheld on February 20, 2012, this appears to have put a brake on the pro-death-penalty mood in Japan. The public had been highly sympathetic to Motomura's views at the time of the murder. However, the realization that he was now rebuilding his own life (he had by this point remarried) while at the same time demanding that the offender be executed, removing any prospect of rehabilitation, was viewed as hypocritical and sympathy dissipated. This did not alter the sentence as according to the judge, Kanetsuki Seiichi, "Despite a severe sense of victimization by the bereaved family, sincere remorse is not seen as the defendant made irrational pleas," and the death sentence was inevitable.[26] Following this, an editorial in *Asahi* on February 21, 2012 posed an ethical question to the public, asking whether taking the life of one who had committed the crime as an 18-year-old boy was social justice and would bring happiness to Motomura:

> The death sentence was finalized to the defendant. However, if he had not reached the age 18 at the time of the crime, this court decision would not have been made. The decision was that *there is no other way than death for him to atone for the crime* even considering his immaturity and possibility of correction and rehabilitation. […] A death sentence is challenging for a judges to give. A modern state, which aims to protect the individual life, deprives an individual of life under the name of law. This is the contradiction that anti-death-penalty lobby claims.[27]

Asahi thus alarmed the public about the legal legitimacy issue regarding state killing. In fact, in contrast to Motomura, another victim lobbyist in a capital punishment case had been lecturing across the country proclaiming the importance of rehabilitation of offenders: Harada Masaharu. The following section will introduce an alternative voice to what the Japanese government cites as "the feelings of victims' bereaved families."

The Anti-Death-Penalty Victim Lobby

On January 24, 1983, Harada Akio, 30-year-old truck driver, was killed in an incident that proved to be an insurance scam orchestrated by Hasegawa Toshihiko, the president of the company in which Harada was employed.[28] After Hasegawa was sentenced to death in two trials, he kept sending more than 100 letters to Harada Masaharu, the victim's brother, from death row; most of them were filled with words of apology and hope for the best for his family. He also sent some drawings that were Hasegawa's self-portraits.[29] It was not until 1986 that Harada finally began to read Hasegawa's letters, and he visited Hasegawa in the detention center in 1993. Facing Hasegawa who had apologized sincerely, Harada felt a sense of comfort and healing for the first time, if not forgiveness towards Hasegawa.[30] Harada also got to know that Hasegawa's sister and son committed suicide as they were ashamed that Hasegawa had been arrested. Harada then started to believe that another unnatural death such as suicide should be avoided, and that Hasegawa should compensate for his wrongdoing by living and expressing remorse to Harada for the

rest of his life.[31)]

Since Hasegawa had already exhausted the appeals process and the death sentence had been finalized, Harada handed in a petition on April 18, 2001 to the then Minister of Justice, Kōmura Masahiko, calling on him to halt Hasegawa's execution. Kōmura declared in front of a TV crew that Hasegawa's execution would not be authorized immediately.[32)] However, despite Harada's pleas, Hasegawa was executed on December 27, 2001 under the authorization of the following Minister of Justice, Moriyama Mayumi. Although the Japanese government often claims that capital punishment is carried out considering the feelings of the victims in Japan, Hasegawa was executed in contradiction to Harada's wishes.

Through this experience, Harada claimed that capital punishment does not necessarily bring closure or satisfaction to the bereaved families.[33)] Similarly, Katayama Tadaari, who lost his eight-year-old son in a traffic accident on November 28, 1997, declared:

> It should be realized that each bereaved family has different views [...,] and within a family the father, mother, or the victim's brothers and sisters have their own opinions. We cannot refer to 'victims' or 'bereaved families' in a lump. [...] I want to see a system where victims are fully supported financially and psychologically and they could have a venue for dialogue with offenders, who will return to society in the future, rather than feuding with each other.[34)]

Harada describes crime victims as those who have been pushed off a cliff by criminals, and the rest of the Japanese citizens as those who live peacefully on the cliff[35)]: the latter never say, "Hang in there! We will lift you up!" but only shout from above, "You must be hurt. We will also push the criminal off the cliff so you would feel better."[36)] Harada claims that the public as the third party usually seeks to promote more severe punishment for the criminals without being aware of what they can really do to heal the bereaved families' mental wounds. Thus, there exists a dichotomy within the victim lobby on the ways criminals should atone for crimes. Whilst the government proclaims that capital punishment is deeply embedded in cultural values concerning life and death, and provides some satisfaction for the victim, some victim lobby campaigners not only do not share this view, but actively challenge it. It is only the voice of the pro-death-penalty victim lobby that is used for the government's justification of capital punishment. The following section will explore how the media has contributed to creation of "public opinion on capital punishment."

The Influence of the Media in Shaping Pro-Death-Penalty Sentiment amongst the Public

On first examination, it appears that the media tend to let the public make up their minds whether to support Motomura's vocal pro-death-penalty campaigns or Yasuda's anti-death-penalty campaigns. However, the media usually only reports after an incident occurs, the offender is arrested and capital punishment is imposed. These reports provide basic information, yet are sufficient to perpetuate the public myth of capital punishment as social justice and to exacerbate public fear about abolition of the system. The media rarely feature detention conditions or the exact

method of execution in any detail. Nor do they highlight any remorse expressed by offenders. Consequently, it is difficult for the public to be aware of psychological changes in offenders' feelings towards the bereaved families or remorse about the crimes committed, as the Harada case shows. In other words, the public has supported capital punishment over the years without being given sufficient information about the physical experiences of being a death row inmate, nor with a sense of them as individuals with emotional and psychological responses to their own actions.

It is not necessarily the media's fault that the public are not fully informed about the capital punishment system. Rather, it is closely related to the secretive policy of the Ministry of Justice that has hindered the media's ability to gain access to Ministry officials to discuss these issues. However, in the interviews I conducted with journalists from the two main newspaper agencies, both stated that having been able to know the victims through interviews, they tended to become sympathetic towards the bereaved families and as a result articles tend to be written from the victims' perspective.[37] Although it is not impossible for journalists to interview offenders, they cannot spend a comparative amount of time to that spent interviewing bereaved families, especially after the offender is detained. It is crucial that the media enable the alternative victim lobby voices to be heard by the public in order to demonstrate the diversity in opinion amongst victims' families and to reflect that capital punishment does not necessarily bring a sense of justice to all bereaved families.

Both Motomura's and the general public's support for capital punishment appears to be partially founded upon a simple misunderstanding about the severity of the main alternative, life imprisonment with parole, rather than based upon complex factors. According to Article 28 of the Penal Code:

> When a person sentenced to imprisonment with or without work evinces signs of substantial reformation, the person may be paroled by a disposition of a government agency after that person has served one-third of the definite term sentenced or 10 years in the case of a life imprisonment.

Therefore, there is a tendency for the public to perceive life imprisonment with parole as a fairly mild penalty, and a widespread belief that those convicted of serious crimes will be released within ten to 15 years. However, statistics from 2007 show that on average offenders are released after 31 years and ten months; and "the chances of release on parole among lifers have almost disappeared and a life sentence really does mean 'until death' in Japan."[38] In an attempt to narrow this perceived "gap" between capital punishment and life imprisonment, there has emerged a movement promoting the introduction of life imprisonment without parole.[39] However, domestic discussion has barely commenced. The governmental opinion polls do not pose such questions, and the ethical debate on whether life imprisonment without parole would be as cruel as capital punishment, or more so, has yet to be resolved amongst legal experts or within the anti-death-penalty lobby. Therefore, public support for capital punishment does not appear to stem from either a definite reliance upon or coherent understanding of the capital punishment system itself.

Rather, it is heavily influenced by the weighted media coverage of serious crimes and misunderstanding of the only current alternative, life sentence with parole. The potential to explore the debate around life sentences with or without parole has been significantly hampered by a lack of governmental effort to discuss the issues.

To sum up, what makes the retributive sentiment look "Japanese" appears to be strategic narratives constructed by policy elites. Whilst social norms on atonement through death may exist in civil society, influenced by the Japanese public's possession of self-discipline and their views on criminals and death row inmates, the existence of such a norm does not lead inexorably to the state retaining capital punishment. Given that the issue of maintaining capital punishment is elite-driven, it is the governmental discourse, which refers to the historical and cultural practice, that has been making Japanese culture look like a determining factor for justification of the system. Having examined what cultural features have been proclaimed by the Japanese government to be supporting capital punishment, the following section will investigate what other cultural factors appear to be hindering the Japanese public from considering the anti-death-penalty norm.

3. Public Resistance to the Anti-Death-Penalty Norm Reconsidered

While the cultural value of *shinde wabiru* may not be appreciated by the contemporary Japanese public, other cultural features may appear to be associated with public support for capital punishment. This section will critically examine the extent to which Japanese legal and human rights consciousness has contributed to public resistance to abolishing the death penalty. It will contend that it is not necessarily Japanese cultural values that have been hindering the abolitionist movement, but rather the principles and characteristics of domestic anti-death-penalty NGOs that have failed to garner wide public support for abolition.

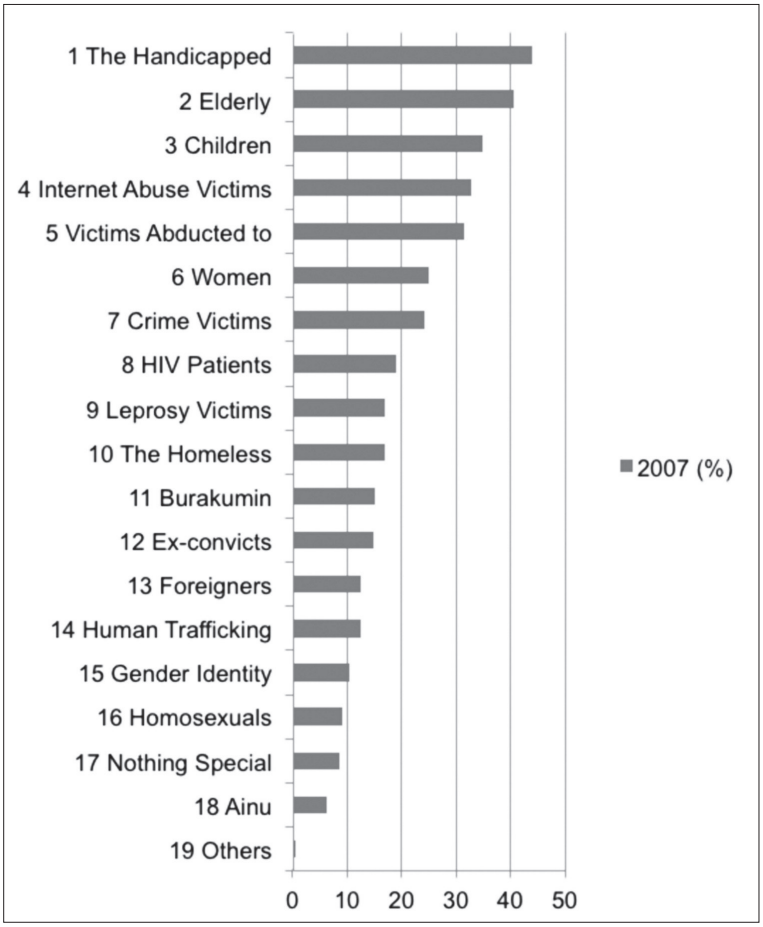
Japanese Human Rights and Legal Consciousness

First of all, retention of capital punishment in Japan might on first reflection imply that the Japanese public has lower human rights consciousness than the public in Western countries. However, as the Japanese government has treated the issue of capital punishment from the perspective of criminal justice, the Japanese public has not been given opportunities to discuss the human rights perspective in any depth or with access to the relevant information.

A Public Survey on the Defense of Human Rights (*Jinken yōgo ni kansuru yoron chōsa*) is conducted by the Prime Minister's Office every five years; in 2007, some 1,776 out of 3,000 people aged 20 or older responded. With regard to the question: "Which of the following human rights issues are you concerned with?," 19 issues are listed as possible choices (see Table 1). What is noteworthy is that most domestic human rights issues raised by the Prime Minister's Office are significantly different from the issues that concern the international society in relation to Japan, for example: (1) treatment of prisoners; (2) lack of an independent national human rights institution; (3) historical responsibility for the *ianfu* (comfort women) system during the war; and (4) the rights of minorities and foreigners.[40)]

It is understandable that domestic concerns raised by the national government

Table 1: Opinion Poll on Defense of Human Rights by the Prime Minister's Office "Which of the Following Human Rights Issues are you Concerned with?"



Prime Minister's Office, "*Jinken Yogo ni Kansuru Yoron Chosa*" 2007, available at http://www8.cao.go.jp/survey/h19/h19-jinken/index.html [last accessed on March 20, 2013].

are more likely to focus upon daily or local issues whilst those raised by international society tend to be more internationally critical issues from a global comparison. However, since there is no question in the survey relating to the treatment of prisoners, there is little chance that the public would treat related issues such as detention conditions and execution methods for death row inmates as human rights issues in Japan. Excluding these issues from the opinion polls appears to act as an inhibitor contributing to a stifling of public engagement in a domestic debate on capital punishment. Therefore, it is a difficult task to statistically observe the Japanese public's attitude towards human rights of prisoners or death row inmates in particular, or to claim that retention of capital punishment stems from the low human rights consciousness of the Japanese public.

Similarly, the state of Japanese legal consciousness may contribute to an explanation of why the general public does not demonstrate much sympathy towards domestic anti-death-penalty activities. In other words, if the Japanese public has "low" legal consciousness overall, they may not necessarily show particular interest in the activists' campaigns which seek to challenge the existing legal system. For example, a low litigation rate in Japan by comparison with other industrialized countries[41] may make it appear that the Japanese public has "low" legal consciousness and do not support the anti-death-penalty lobby which seeks to challenge the existing legal provisions. According to Meryll Dean,[42] the Japanese public tends to "regard law like an heirloom samurai sword, something to be treasured but not used," and prefer to settle disputes informally through mediation.

A legal sociologist, Kawashima Takeyoshi, agrees and also claims that individual members of the Japanese public do not appear to assert their legal rights. According to Kawashima, whilst duty or norms are emphasized in Japanese society, terms such as *kenri* (rights) did not exist when Japan imported a Western legal system, which has made translation work challenging.[43] His preposition is that once a contract is made in any profession, a master-servant relationship arises: when troubles occur in this power dynamic, mediation is preferred and any sense of injustice is expected to be *mizu ni nagasu* (washed away) through apology or small compensation. If someone seeks to bring a lawsuit, this behavior is seen as morally wrong, subversive, and rebellious and it is these cultural expectations that appear to have been contributing to the low litigation rates in Japan.[44] Wagatsuma Hiroshi and Arthur Rosett have also explained the nature and impact of the apology culture in Japan. Both highlight that the Japanese tend to apologize even for something that is not entirely their fault, and this derives from their wish to maintain community harmony and stability.[45] Such a cultural preference might not appear likely to motivate the Japanese public to support the anti-death-penalty lobby's vocal campaigns, which focus upon lobbying the government to repeal or amend legal provisions.

However, as with the complications in establishing an understanding of human rights consciousness, it is difficult to accurately evaluate Japanese legal consciousness. When explaining why the informal way is preferred for solving problems, it is worth noting the conciliation methods employed in Japan. For example, companies usually provide employees with insurance to cover a mediating service in case of traffic accidents, and this reduces the need for the individual to bring a lawsuit. Legal procedures are implemented only after all the available conciliation methods have been exhausted, and by that point, the problem is normally solved peacefully through the efforts of mediators. Therefore, the low litigation rate in Japan does not necessarily stem from a "low" level of legal consciousness among the Japanese public, but from widespread preference that values conciliation above the potentially more combative litigation. More precisely, the legal consciousness of the Japanese public cannot be examined solely through the lens of culture *or* institutions, but should rather encompass both study areas.[46]

Finally, the next section will examine the specific characteristics of one of the largest anti-death-penalty NGOs, which appear to be having a greater impact than any cultural factors and are directly contributing to the failure to gain sympathy

from the majority of public for the cause of abolition.

Characteristics of Anti-Death-Penalty NGOs in Japan

Currently, Forum 90, founded in 1990, is the largest anti-death-penalty NGO in Japan. Yasuda Yoshihiro is one of the key founders of Forum 90, and as already discussed, he is a criminal lawyer widely known for his activities in high-profile murder cases. He was one of the defense counsel for Asahara Shōkō, who was responsible for the Aum Shinrikyō gas attack on the Tokyo underground railway in 1995, and also as defense counsel for the offender, then a minor, in the Hikari case in 1999.

The Asahara Shōkō case involved the most serious security threat in Japan in decades requiring the deployment of 60,000 police along with massive numbers of the Self-Defense Forces (SDF). Asahara Shōkō was leader of the Aum Shinrikyō, a religious sect with 10,000 members that sought to maximize the impact of its protest against government through organized crimes. Fifty-eight SDF members had been identified as Aum members by the autumn of 1995. The sect's commitment to crime from the late 1980s to the early 90s is abundantly clear.[47] Some core members were among the brightest scientists in Japan, and the gas attack was planned using their skills with devastating effect.[48] The media portrayed the organization as an 'atrocious murder group' or a 'brainwashed spooky cult group' and its removal from society became a high priority for restoring public safety in Japan.[49] The public mood was that Asahara should be sentenced to death and executed as soon as possible, and the trial for the Aum gas attack commenced despite the prevailing assessment amongst psychiatrists being that Asahara lacked the mental capacity to stand trial.[50]

Whilst the Aum gas attack created an extremely negative image of the anti-death-penalty movement,[51] public resistance to abolishing the death penalty became more evident after Yasuda joined the defense team in the Hikari case. In defense of a minor offender, the team claimed that the defendant had tried to revive both victims using the power of the *Doraemon*, a robotic cat manga character, which could make any dreams come true and use supernatural powers.[52] However, as soon as the media featured the defense team's claim, Yasuda was severely criticized. For example, the Japan Federation of Bar Associations received more than 8,000 calls from the public demanding the disbarment of Yasuda,[53] and Forum 90 received abusive calls on a daily basis.[54]

In my interview, an anonymous NGO member stated that Yasuda's activities as a defense attorney definitely became a setback to the anti-death-penalty campaign.[55] The combination of Yasuda's professional responsibility as a defense counsel with his passion to achieve abolitionism in Japan meant that his arguments were often presented from the perspective of suspected criminals, a stark contrast with the majority view of the victim lobby or the general public.[56] Since Yasuda is a high profile figure associated with a well-known anti-death-penalty NGO, the abolitionist lobby is viewed as homogeneous and labeled collectively as placing emphasis on the human rights of criminals while giving too little consideration to the feelings of bereaved families.[57] Consequently, the public tends to show resistance to abolitionist activities, which in this context are viewed as going against the wider public good.

Cultural explanations for the Japanese public's failure to show sympathy towards

anti-death-penalty NGO activities—for example, that the Japanese public has a distinctive view of death and life or possess "low" human rights or legal consciousness—do not reflect the full story. Rather, it is the role and distinctive characteristics of key anti-death-penalty NGOs that appear to have contributed to their failure to win broad support amongst the public. In particular, the different ideas of social justice expressed by high profile members of the NGO—views that reflect their professional role and passion to bring abolitionism to Japan—have polarized rather than transformed public opinion.[58]

4. Conclusion

This paper critically examined the governmental justification of capital punishment on cultural grounds. Pro-death-penalty Ministers of Justice claim that capital punishment is deeply embedded in the Japanese view of guilt, and some invoke the example of the concept of *shinde wabiru*.[59] However, this paper discussed the conceptual and methodological problem in application of this concept to capital punishment policy, highlighting the divergence between pro- and anti-death-penalty victim lobbies in their views on social justice.

Whilst the Japanese view on criminals or death row inmates appears to relate to this social norm, there are several problems with the application of this concept to support the death penalty. The ritual of *shinde wabiru* is a particular sociological phenomenon conducted by samurai warriors, and not a common practice in contemporary Japan. A fact overlooked by pro-death-penalty Ministers of Justice is that spontaneity is a key component for this act and the action is voluntary rather than state enforced. Also, a contrasting proverb has been ignored in their claims. Although the Japanese public's human rights and legal consciousness may initially appear to support the death penalty to some extent, it should be noted that methodological problems in measuring this have been overlooked. The government justifies capital punishment as victim satisfaction as do the media, but nonetheless, there exists an anti-death-penalty victim lobby, which poses an ethical question about whether state killing can bring closure to a crime. "Public opinion on the death penalty" appears to be shaped by the governmental claims; the media, which feature a sensationalist pro-death-penalty victim lobby; and a public image of a particular anti-death-penalty activist group. Consequently, there is a need for careful attention to the government's strategic use of culture in its defense of capital punishment. It appears that it is the governmental narratives, which refer to historical and cultural practice, that have been shaping the view that Japanese culture is a determining factor for justification of the system.

Notes

1) Kunio Hatoyama, "The 169th Legal Affairs Committee of the House of Representatives," April 11, 2008, 25.

2) *Japan Times*, "Diet Group against Death Penalty to Make Its Move," October 4, 2002, available at http://www.japantimes.co.jp/text/nn20021004b1.html [last accessed on August 16, 2013].

3) Mayumi Moriyama quoted in *Japan Times*, "Diet Group against Death Penalty to Make Its Move," October 4, 2002, available at http://www.japantimes.co.jp/text/nn20021004b1.html [last accessed on August 16, 2013]; Daniel A. Métaux, "The Nagayama Criteria for Assessing the Death Penalty

in Japan: Reflections of a Case Suspect," *Southeast Review of Asian Studies*, 31, 2009, 282–9, 282.

4) Michita Sakata, "The 96th Legal Affairs Committee of the House of Councillors," March 23, 1982, 20.
5) Robert J. Lifton, *Nihonjin no shiseikan jo* (Tokyo: Iwanami Shoten, 1977), 65.
6) Ibid., 66.
7) Ibid., 53.
8) Ibid.
9) Nobuo Komiya, "A Cultural Study of the Low Crime Rate in Japan," *British Journal of Criminology*, 39(3), 1999, 369–390, 387.
10) Ibid., 369–390.
11) Ibid., 383.
12) Ibid., 373.
13) Robert J. Lifton, *Nihonjin no shiseikan jo* (Tokyo: Iwanami Shoten, 1977), 73, 79, 92.
14) Interview with an attorney, Tokyo, April 13, 2011.
15) When several media agencies disclosed the name of the offender in the Hikari case in 2012, the Japan Federation of Bar Associations voiced concerns, stressing that he was a minor at the time of the crime (Kyōdo, "*Jitsumei hōdō 'kiwamete ikan' to nichibenren: Hikarishi jiken hanketsu de kaichō seimei*," February 24, 2012). *Sankei, Asahi, Yomiuri* and *Nikkei* disclosed the name when the death sentence was finally upheld in February 2012. It had been withheld considering that he was a minor (the legal age of adulthood is 20 in Japan) and would go back to civil society after correction or rehabilitation. However, these newspaper agencies concluded that the opportunity for that had been lost and there was no need to hide his identity (*Sankei, "13 nen go no Shinpan: Keiji Bengo no Arikata Tou 'Doraemon' no Shogeki*"", February 22, 2012). In the meantime, the *Mainichi* and *Tokyo* newspapers withheld it, considering that it was still important for the offender to be corrected and show remorse towards the bereaved family, and leave the possibility of retrials or a reprieve as well (Ibid.).
16) Sarin gas was spread by the Aum Shinrikyo Sect in the Tokyo underground on March 20, 1995—the biggest security threat in Japan in decades.
17) Kōichi Hamai and Thomas Ellis, "*Genbatsuka*: Growing Penal Populism and the Changing Role of Public Prosecutors in Japan?," *Japanese Journal of Sociological Criminology*, 33, 2008, 67–92, 80.
18) Ibid.
19) *Japan Times*, "Writer: Juvenile Killer not a 'Devil' First Sentenced to Life, then Death, Accused was Abused, Name-Naming Book Says," January 6. 2010, available at http://www.japantimes.co.jp/text/nn20100106f2.html [last accessed on August 16, 2013].
20) *Sankei, "13 nen go no shinpan: keiji bengo no arikata tou 'Doraemon' no shōgeki*'," February 22, 2012.
21) *Sankei, "Hikari shi boshi satsugai: TV hōso wa kanjōteki, BPO kenshōi ga ikensho*," April 16, 2008.
22) Kōichi Hamai and Thomas Ellis, "*Genbatsuka*: Growing Penal Populism and the Changing Role of Public Prosecutors in Japan?," *Japanese Journal of Sociological Criminology*, 33, 2008, 67–92, 81.
23) Ibid., 79.
24) Kōichi Hamai and Thomas Ellis, "Japanese Criminal Justice: Was Reintegrative Shaming a Chimera?," *Punishment & Society*, 10 (1), 2008, 25–46, 33, available at http://www.port.ac.uk/departments/academic/icjs/staff/documentation/filetodownload,73687,en.pdf [last accessed on August 16, 2013].
25) *Japan Times*, "Experts Doubt Wisdom of Proposal to Let Victims Attend Juvenile Trials," April 11, 2008, available at http://www.japantimes.co.jp/text/nn20080411f2.html [last accessed on August 16, 2013].
26) *Mainichi*, "Death Penalty to Stand for Man over 1999 Murders of 2 as Minor," February 20, 2012.
27) *Asahi, "Tensei Jingo*," February 21, 2012.
28) Although his death was initially believed to be a traffic accident, it was discovered on May 2, 1984 that the president of his company was involved in the murder (Masaharu Harada, *Otōto wo koroshita kare to boku* (Tokyo: Popura, 2004), 76–7.
29) Tatsuya Mori, *Shikei: hito wa hito wo koroseru, demo hito wa hito wo sukuitai tomo omou* (Tokyo: Asahi Shuppan Sha, 2008), 51.

30) Masaharu Harada, *Otōto wo koroshita kare to boku* (Tokyo: Popura, 2004).
31) Ibid., 104.
32) Ibid., 108–9.
33) Masaharu Harada, *Otōto wo koroshita kare to boku* (Tokyo: Popura, 2004).
34) *Japan Times*, "Victims' Trial Role to be Avengers?" November 21, 2007, available at http://www.japantimes.co.jp/text/nn20071121f3.html [last accessed on August 16, 2013].
35) Masaharu Harada, *Otōto wo koroshita kare to boku* (Tokyo: Popura, 2004), 51–2.
36) Ibid.
37) Interview with a senior writer at a newspaper agency, Tokyo, May 12, 2011; postal correspondence with a senior writer at a newspaper agency, May 21, 2011.
38) Kōichi Hamai and Thomas Ellis, "*Genbatsuka*: Growing Penal Populism and the Changing Role of Public Prosecutors in Japan?," *Japanese Journal of Sociological Criminology*, 33, 2008, 67–92, 73; Kei-ichi Kiriyama, "*Susumu Shushinkeika: Mukishoueki no Genjitsu*", *Sekai*, 782, 2008, 169–172, 171.
39) Japan Federation of Bar Associations, "*Ryōkei seido wo kangaeru chōtōha no kai no keihō nado no ichibu wo kaisei suru hōritsuan (Shūshinkei dōnyu kankei) ni taisuru ikensho*," November 18, 2008, available at: http://www.nichibenren.or.jp/library/ja/opinion/report/data/081118.pdf [last accessed on August 16, 2013].
40) Amnesty International, *Japan: Amnesty International Submission to the UN Human Rights Committee, 92nd session of the UN Human Rights Committee*, 17 March—4 April 2008 Pre-sessional meeting of the Country Report Task Force on Japan, February 2008, available at http://www2.ohchr.org/english/bodies/hrc/docs/ngos/AIJapan92.pdf [last accessed on October 17, 2013]; UN Human Rights Committee, *Concluding Observations of the Human Rights Committee: Japan*, CCPR/C/JPN/CO/5, December 18, 2008, available at http://www.adh-geneva.ch/RULAC/pdf_state/states-reports-2008-civil-ccpr2.pdf [last accessed on October 17, 2013]
41) Takeyoshi Kawashima, *Nihonjin no hōishiki* (Tokyo: Iwanami Shoten, 1967); Tony Cole, "Commercial Arbitration in Japan: Contributions to the Debate on Japanese 'Non-Litigiousness'," *New York University Journal of International Law and Politics*, 40(1), 2007, 29–114.
42) Meryll Dean, *Japanese Legal System*, 2nd ed. (Abingdon: Routledge-Cavendish, 2002), 4.
43) Takeyoshi Kawashima, *Nihonjin no hōishiki* (Tokyo: Iwanami Shoten, 1967), 15.
44) Takeyoshi Kawashima, "Dispute Resolution in Contemporary Japan" in Arthur T. von Mehren (ed.), *Law in Japan: The Legal Order in a Changing Society* (Cambridge, MA: Harvard University Press, 1963), 41–72, 45.
45) Hiroshi Wagatsuma and Arthur Rosett, 'The Implications of Apology: Law and Culture in Japan and the United States," *Law and Society Review*, 20(4), 1986, 461–498.
46) Eric A. Feldman, "Law, Culture, and Conflict: Dispute Resolution in Postwar Japan," *Scholarship at Penn Law*, 2007, 50–79, 63, available at http://lsr.nellco.org/cgi/viewcontent.cgi?article=1158&context=upenn_wps [last accessed on August 16, 2013]
47) They include: (1) the Sakamoto family murder on November 4, 1989; (2) the Matsumoto gas attack on June 27, 1994; (3) the shooting of the National Police Agency Chief, Kunimatsu Takaji, on June 21, 1995; and (4) a case of a letter bomb sent to the Tokyo Governor on May 16, 1995: Peter J. Katzenstein, *Cultural Norms and National Security: Police and Military in Postwar Japan* (Ithaca: Cornell University Press, 1996), 71–2.
48) Ibid., 71.
49) Masachi Ōsawa and Tatsuya Mori, *"Taidan: wareware wa tasha no shi ni mukiaeru ka: akihabara jiken to shikei wo megutte," Sekai* (Tokyo: Iwanami Shoten, 2008), 157.
50) Otohiko Kaga and Yoshihiro Yasuda, *"Taidan: Shikei wa Shakai wo Yaban ni suru," Sekai* (Tokyo: Iwanami Shoten, 2008), 133. The trial started on April 24, 1996, and Asahara was sentenced to death on February 27, 2004 after 257 trial sessions (Jiro Nakamura, "The Present Situation of Aum Trials," *Zeitschrift für Internationale Strafrechtsdogmatik*, 8, 2006, 378–9, 378), available at http://www.zis-online.com/dat/artikel/2006_8_60.pdf [last accessed on August 16, 2013].
51) *Sankei, "13 Nen go no shinpan: keiji bengo no arikata tou "Doraemon" no shogeki,"* February 22, 2012.
52) *Japan Times*, "Writer: Juvenile Killer not a 'Devil' First Sentenced to Life, then Death, Accused was Abused, Name-Naming Book Says," January 6 2010, available at: http://www.japantimes.co.jp/

text/nn20100106f2.html [last accessed October 11 2013].

53) *Sankei, "13 Nen go no shinpan: keiji bengo no arikata tou "Doraemon" no shogeki,"* February 22, 2012.

54) Interview with two NGO staff member, Tokyo, May 17, 2011.

55) Interview with an NGO staff member, Tokyo, April 12, 2011.

56) Ibid.

57) Ibid.

58) Ibid.

59) *Japan Times*, "Diet Group against Death Penalty to Make Its Move," October 4, 2002, available at http://www.japantimes.co.jp/text/nn20021004b1.html [last accessed on August 16, 2013]; Okuno Seisuke, "The 93th Legal Affairs Committee of the House of Councillors," December 18, 1980, 8; Gotō Masao, "The 116th Legal Affairs Committee of the House of Councillors," December 5, 1989, 3.