

Secrecy and Other Issues relating to the Death Penalty in Japan

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On November 4 1998 Japan's Justice Minister, Nakamura Shozaburo announced that the government was considering disclosing the date of executions and the number of prisoners hanged, shortly after the executions had been carried out, saying that the public should know that executions had been carried out in accordance with the courts' decisions. He said, however, that neither the names of those put to death, nor the locations of the prisons involved would be publicized, at least for the time being. Until now the government has had a policy of secrecy regarding the carrying out of executions, both before and after they took place, confining itself to the publication of an annual total of those executed. (Albeit in December 1996, for the first time ever, the Minister of Justice, Matsuura Isao, confirmed to the media, after executions had been carried out, that he had signed the death warrants¹⁾.) Just over 2 weeks later on November 19 the Justice Ministry duly announced that it had carried out the execution of 3 prisoners earlier in the day.

To people familiar with the way that the death penalty is administered in the U.S.A., where, especially in the case of the more infamous of the condemned, there is inevitably a media feeding frenzy in the days leading up to the execution with the drama spiced up by final appeals to both courts and the state governor as well as vigils and demonstrations outside the relevant prison by both pro and anti capital punishment groups, the lack of transparency in this one area of the judicial system of one of the developed countries is likely to be surprising. (Apart from 38 of the states of America, Japan is alone among the developed countries in its continued use of the death penalty.) In what follows, I plan to look at the recent background leading up to this latest pronouncement, the secrecy which surrounds the death penalty, the death sentences meted out for two of the most notorious crimes of the past two decades, as well as some of the salient features of the death penalty in Japan. In the process I will be firing a few broadsides at the institution of capital punishment itself, however I will not be dealing with

1) Japan Times 25/12/96, p.2.

that topic in either a rigorous or exhaustive manner.

Although the time frame is somewhat arbitrary, I intend to look at the state of affairs in the 1990s, when capital punishment has again become a highly controversial topic. The reason that I say that the time frame is arbitrary is because there has been a death penalty in Japan throughout this century and indeed for most of its history and there will have been times prior to the 1990s when capital punishment became a hotly debated topic, for instance in 1948 when the Supreme Court ruled on whether the death penalty violated the constitutional ban on cruel punishment²⁾ (it ruled against that challenge)³⁾, or perhaps when there was news of a country deciding to abolish the practice or reinstate it or no doubt also at the time when, in England, Timothy Evans, hanged for the murder of his wife and child, was found innocent of the charges and granted a posthumous pardon.

One important reason that the death penalty has become controversial again in this decade can be traced back to an event in 1989. In December of that year the U. N. General Assembly adopted the Second Optional Protocol to the International Covenant on Civil and Political Rights which required that no further executions take place and that the death penalty be abolished⁴⁾. A number of countries including Japan and America opposed the adoption of this Protocol and hence have not ratified it since it came into effect in July 1991. However no executions were carried out in Japan between November 1989 and March 1993, an unprecedented length of time. Wakabayashi suggests a number of reasons, other than the adoption of the U. N. Protocol, why such a long period was allowed to elapse. In no particular order they are as follows: —

- 1 One of the 4 Justice Ministers in office during the period, Sato Megumu, a Buddhist priest, refused to sign any execution orders on religious grounds during his 10 months tenure⁵⁾.
- 2 The existence of pressure groups. As of 1994 there were over 50 different groups in Japan working towards the abolition of the death penalty. One of the higher profile organisations was Forum '90 for the Ratification of the Convention on the Abolition of

2) 'The infliction of torture by any public officer and cruel punishments are absolutely forbidden.' The Constitution of Japan, 1946, Chapter 111, Article 36. In Kodansha Encyclopedia of Japan, Vol. 2 (1983), p. 10.

3) Wakabayashi (1994), p. 192.

4) Ibid., p. 190.

5) Ibid., p. 203.

the Death Penalty which in 1994 had over 5000 members including 182 members of parliament and 550 lawyers⁶⁾.

- 3 There has been greater discussion of this topic in the Diet (as of 1994 over 240 members across parties favoured abolition) as well as in the media⁷⁾.
- 4 Following a 1976 Supreme Court ruling which relaxed the conditions for a retrial of a convicted person, there were a total of 3 acquittals of such people in the 1980s, one of whom, Menda Sakae, had spent 34 years on death row and became the first person under sentence of death to be acquitted in Japan⁸⁾.

In March 1993, then, after a gap of 3 years 4 months, executions were re-started and since then, a total of 36 people (as of 31 December 1999)⁹⁾ have been sent to the gallows. The annual execution average of 1 or 2 during the 1980s¹⁰⁾ has therefore been boosted to an annual average of 5 over the past 7 years. The increase may be explained in part as an attempt to deal with some of the backlog of cases since during the period when there were no executions the courts were still handing down death sentences and the higher courts were still hearing appeals and finalising death sentences. It may also be that with the passage of time, memories of the injustices suffered by those acquitted in the 1980s has faded and the international pressure to ratify the U. N. Protocol would also be significantly less than at the time of its adoption, particularly as many states of the U.S.A. have been carrying out executions throughout this decade.

I'd like to return to the question of secrecy associated with the carrying out of the death penalty which I raised at the beginning. One explanation for this which I have come across is "The ministry does not usually disclose information about hangings — except for an annual total of executions — out of what it claims is consideration for the feelings of the inmates and their relatives."¹¹⁾ As we are given to understand that shame plays a bigger role in human relations in Japan than in the West the explanation sounds plausible enough. The meaning of

6) Ibid., p. 196.

7) Ibid., p. 197–198.

8) Ibid., p. 193–194.

9) 1993–7 executions; 1994–2 executions; 1995–6 executions; 1996–6 executions; 1997–4 executions; 1998–6 executions; 1999–5 executions. (Japan Times 29/3/93, p. 2; 29/11/93, p. 2; 3/12/94, p. 2; 28/5/95, p. 1; 23/12/95, p. 3; 13/7/96, p. 1; 25/12/96, p. 2; 3/8/97, p. 2; 27/6/98, p. 2; 20/11/98, p. 1; 11/9/99, p. 1; 18/12/99, p. 1.)

10) Wakabayashi (1994), p. 191.

11) Japan Times 5/11/98, p.1–2.

'the feelings of the inmates' is ambiguous but if what is meant is that it is easier on the condemned psychologically if they don't have, as in America, to count down to a fixed date of execution and / or that it is done out of consideration for those remaining on death row, then I don't think the argument is invalid, although in such circumstances the condemned would not have a chance to make final preparations or to say their final goodbyes. As the family of the condemned are also not party to the details of the execution date, (nor even, incredible as it may sound, is the condemned person's lawyer¹²⁾) they might feel victims of the government's policy of secrecy, rather than beneficiaries, since they will also be unable to say their final goodbyes. There are other problems, though, associated with this secrecy. One problem relates to those selected for execution. Of those whose sentence has been finalised¹³⁾, the ones chosen for execution are not those who have spent the longest time on death row, either before or after the sentence has been finalised¹⁴⁾. (According to the Code of Criminal Procedure, the Justice Minister must sign the execution order within 6 months of a death sentence being finalised. In practice, it normally takes a lot longer¹⁵⁾.) When asked to explain why particular condemned prisoners are chosen ahead of others to be executed the Justice Ministry is able to hide behind their policy of secrecy which they claim is justified by their duty to protect the feelings of the parties involved. However, as long as there is this lack of transparency and hence accountability to the public they serve, the system is open to abuse. To spell this out a little, as long as prisoners are not executed in strict order after having their sentence finalised and the authorities do not make clear their reasons for choosing one ahead of another, they might be making decisions based on self-interest or prejudice. For example the Ministry may select a prisoner for execution because he is disruptive or challenges the system or because they have a particular prejudice towards certain criminals or kinds of crime or because prison officials have developed a personal enmity towards a prisoner and write unfavourable and untrue reports about him. There may be this kind of sinister decision-making or there may be other reasons or there may be an arbitrary selection after the decision is made that executions should be carried out during a given year. Kikuta says there must be reasons why, in the case of the three prisoners executed prior to his writing his article, only about eight years had elapsed since having their sentence finalised whilst there

12) Amnesty International (1997a)

13) 55 people as of Dec. 1999 – Japan Times 18/12/99, p. 1.

14) Kikuta (1996) p. 673.

15) Wakabayashi (1994), p. 194.

were others who were still on death row more than 20 years after their sentence had been finalised¹⁶⁾. Without any evidence, this seems to me no more than an article of faith on his part. In any case, having no knowledge of how the Ministry arrives at their decision, it seems to many outsiders, whether they are right or wrong, a matter of simple bad luck that one person gets chosen ahead of another to be executed. However, this is not the only time that the matter of luck comes into the equation as the question of whether the death penalty will be given in the first instance or whether the sentence will be reduced on appeal depends on the prosecution and what a particular prosecutor demands as a punishment, the quality of the defence, the particular judges involved, the climate of public opinion towards the crime and whether other serious crimes have been committed by others in the year or so preceding the trial. This latter question of luck is, of course, not confined to the Japanese system. My point is that when luck is seen to play a part in the Judicial System, the System loses credibility, even more so when human life is at stake. As a corollary to this I would say that, since it seems extremely difficult to eliminate the element of luck from the trial stage, in other words because one person might end up being sentenced to death while another is sentenced to a period of incarceration for very similar crimes, this is a good reason for abolishing the death penalty. One alternative which would remove a great deal of the element of luck (albeit matters of interpretation would inevitably remain) but which to me would be totally unpalatable, would be to specify the necessary and sufficient conditions for a murder to qualify as a capital crime and then make the sentence mandatory, just as in Malaysia people found in possession of more than a certain amount of illegal drugs are considered to be trafficking and are subject to a mandatory death sentence.

Returning to the question of secrecy, another problem is that any society which uses capital punishment does so, at least in part, for its deterrent effect. But if the execution itself is shrouded in secrecy then much of the force of the deterrent will be lost. Remaining with the subject of secrecy, in spite of the Ministry's current refusal to announce the names of those executed and places of execution, even in the days when the Ministry made no announcements whatsoever of executions, one was (and still is) able to find these details in a newspaper, along with details of the crimes, a day or two after the execution. In light of this, the reason given by the Minister regarding the future disclosure of merely the date of executions and the number of prisoners hanged, in his November 1998 announcement, mentioned at the beginning, i.e. the

16) Kikuta (1996) p. 673.

public's right to know, seems disingenuous, although, I suppose any move towards more openness in government and its bureaucracy should be welcomed. One way in which these details might leak out is presumably when the family of the executed prisoner is told by the prison to collect that person's belongings as well as the body itself, they or relatives or neighbours or the funeral home might contact the media or pressure groups opposed to the death penalty. For all I know the government itself might arrange the leak of information. Whatever the case, under the present situation, if the government merely announces that one person has been executed, even if there are no other leaks, to discover the person's identity, journalists simply have to check the family registers of the 50 or so people who have had their death sentence finalised to find out whose name has been deleted. If the motive of the government is purely as stated, to protect the privacy of the family of the executed prisoner, then there is certainly no reason to compromise their principle simply because the information comes to light through other sources. The problem arises if the reason for the present policy is to make it easier for them not to have to disclose disturbing or questionable practices associated with the administration of the death penalty such as the way of selecting people for execution mentioned above. One reason for suspecting that at least one aim of the policy of secrecy is to hide questionable practices, is to be found in Amnesty International's 1998 Report, 'Japan: Abusive Punishments in Japanese Prisons.' Briefly, the report says prisoners are subjected to systematic, cruel, inhumane or degrading treatment and calls on the government to remove the secrecy that surrounds prisons and enact clear legislation regarding the use of protection cells¹⁷⁾. On the subject of questionable practices, I am informed by a Japanese acquaintance that a former Japanese prison officer has written a book in which he says that prior to taking up a position within a prison he was neither informed in writing nor verbally that one of his duties would be to take it in turn with his colleagues to carry out executions. The purpose of the secrecy might also be to hide the fact that, according to Amnesty International, there is no formal legal procedure for obtaining pardons. As a result, the authorities are neither required by law to reply within a specified time to a prisoner's petition nor are they required to give a reason for refusal¹⁸⁾. Under the present system there is also nothing to stop a person being executed while their petition is still pending. (Justice Minister Usui Hideo said in a session of the House of Councillors Committee on Judicial Affairs on 14/3/2000 that condemned prisoners seeking retrials may be executed *if it seems likely that* their requests would be rejected. This

17) Japan Times 27/6/98, p. 3.

18) Amnesty International (1997a)

seems to mean that the Justice Minister would find it acceptable to sign an execution order on the basis of a guess that the courts would be most likely to reject a request for a retrial. The remark was made in relation to the December 1999 execution of a prisoner who was in the process of seeking a retrial¹⁹⁾.) If the Justice Ministry really have nothing they wish to hide they should also not schedule executions during a parliamentary recess. If executions are carried out on such occasions, it can be interpreted as the government's wish to avoid open debate on the matter, again perhaps because they wish to hide questionable practices²⁰⁾.

For what it is worth, I'd like now to comment a little on the death sentences meted out for two of the most infamous crimes of the past two decades. I should say, as a preliminary, that I have no background whatsoever in law, criminal psychology or any other discipline directly relevant to the matter and my remarks will be based entirely on the very limited amount of information contained in the English language newspaper reports of the day of sentencing.

On 14/4/97 Miyazaki Tsutomu was sentenced to death for the abduction, molestation and murder of 4 girls aged 4 ~ 7 on separate occasions. Five months after killing one of the girls, he burned the body, placed the ashes in a cardboard box and left it in front of the victim's home. Three teams of court-appointed psychiatrists submitted conflicting reports on Miyazaki's mental state. One of the teams testified that he was suffering from a personality disorder, was extremely unbalanced but not mentally ill and so should be held responsible for his actions. Another team said that he suffered from multiple-personality syndrome. The third team judged him to be schizophrenic. The latter two teams were of the opinion that he was feeble-minded at the time of the crimes. According to the criminal law, a person of unsound mind should not be subject to punishment, whereas a person of feeble mind is entitled to a reduced sentence. The judge did not give his reasons for rejecting the expert testimony of the latter two teams in favour of that of the first. The news report also mentioned that the sentencing attracted strong public interest²¹⁾.

On 24/10/98 an Aum Shinrikyo cult deserter, Okazaki Kazuaki, was sentenced to death by the Tokyo District Court for taking part in the murders of an anti-Aum lawyer, the lawyer's wife and child as well as a fellow cultist²²⁾. The judge said he had no other choice of sentence because of Okazaki's extremely grave responsibility as regards the nature of the crime, the

19) Japan Times 16/3/2000, p. 2.

20) Amnesty International (1997b)

21) Japan Times 15/4/97, p. 1.

22) As of 30/9/2000, a total of seven Aum members, including Okazaki, have been sentenced to death. Ibid., 26/7/2000, p. 2 & 29/7/2000, p. 1.

social impact of the case, the motive for the killings, the role he had played and the sentiment of the victims' families. These are criteria for the death penalty laid down by the Supreme Court in their ruling on the serial killer, Nagayama Norio, in 1983²³⁾. The defence argument was that their client had been brain-washed and controlled by the founder and head of the cult, Asahara Shoko, and that this state constitutes being feeble-minded, which as mentioned above entitles the person to a reduced sentence. The defence also argued that Okazaki's confession should be regarded as voluntary surrender. Under the law, leniency can be granted to people who surrender themselves before their crime comes to light. The court found that Okazaki's confession was a voluntary surrender because he had confessed voluntarily before police knew precisely what had happened to the victims. However the court dismissed the claim for leniency on the grounds that (a) part of the motive for the surrender was in order to be protected from the cult and (b) after starting to confess, for several months he omitted to say that it was he himself who had strangled the lawyer. Finally as in the case of Miyazaki, the report said that a large number of people had wanted to attend the sentencing²⁴⁾.

As far as the crimes are concerned I have no intention of trying to justify the unjustifiable or of diminishing their enormity. Nevertheless, I find disturbing elements in both cases. In the first case, an obvious question is, why did the judge, who was presumably not an expert in the field of psychiatry himself, reject the findings of two out of three expert teams and not give his reasons for doing so? I understand that this expert testimony is only a part of the overall evidence, however it presumably should be accorded a certain degree of respect and not simply be used to back up arguments when it matches one's opinion and ignored when it does not. Having said that I am quite aware that being on trial for a capital offence, there is certainly a strong motivation for a defendant to try and hoodwink the psychiatrists into thinking that he is insane, and psychiatry being in the crude state that it is, I have no doubt that defendants have succeeded at this in the past. (I am thinking here of the case of Kenneth Bianchi, one of the so-called Hillside Stranglers in California, who duped eminent psychiatrists into believing that he had multiple personalities.) My main bone of contention is that in both trials people knew from the start what the verdict and the sentence would be and no argument was ever likely to change the course of events. The crux of the matter lies in one of the reasons given in the Okazaki case, namely, 'the social impact of the case'²⁵⁾. This is the same reason that in

23) Wakabayashi (1994), p. 193 & 204.

24) Japan Times 24/10/98, p. 1-2.

25) Ibid., 24/10/98, p. 1.

England, Peter Sutcliffe (the so-called Yorkshire Ripper) was given a prison sentence instead of being remanded in the secure mental institution, which the testimony of the experts had suggested was the appropriate measure and to which he was subsequently transferred. It is also why the British Home Secretary increased the minimum time which the boys who killed James Bulger would have to serve. The baying public — I have in mind the crowds, who wait outside British courts and sometimes manage to assault, but would apparently be eager to take the life of someone accused, but not convicted of a heinous crime — (led by the delightful British tabloid press which make that least pleasant of human characteristics, scapegoating, into a virtue) wants its pound of flesh and the powers that be oblige and justice is sacrificed. The feeble argument given by the Justice System for allowing itself to be led around like a pig with a ring through its nose would probably be that to fail to do so would undermine confidence in or support of law and order. Even if a break-down of law and order were at stake, which is certainly not the case, what the authorities are involved in here is nothing less than a morally-bankrupt utilitarian pandering. My point, then, is that, especially in high profile heinous crimes which attract strong public sentiment which in turn may have an adverse effect on the judicial deliberations, the stakes are that much higher in places which retain the death penalty inasmuch as once the execution has been carried out, there is no possibility of recompensing the executed person if the Justice System discovers that it has been responsible for committing an injustice. I should also say that the Justice System and government do not only react to public opinion, but they also deliberately act in order to curry favour. For example it is once again a matter of sheer bad luck if a condemned prisoner's execution date in America falls within the time-frame of the state governor's campaign for re-election because the decision on the plea for a last-minute stay of execution is likely to be politically-motivated to a high degree i.e. he will feel pressure to demonstrate his toughness on law and order. Whilst the system concerning last-ditch appeals is different in Japan, there are likely to be times when the Justice Ministry, like an American state governor, wishes to flex its muscles i.e. act as well as talk tough, for example by directing a prosecutor to seek the death penalty, and this could be part of the explanation for the previously-mentioned increase in executions since they were re-started in 1993. The reasons that it might wish to flex its muscles are for example when it has been criticized by the media and public for its failure to adequately deal with other crimes e.g. those of politicians or heinous murders, where the killers have not been apprehended. If this is the case then the same element of bad luck arises since the fate of the accused or condemned will be adversely influenced by circumstances totally unrelated to the crime of which the person has

been accused or found guilty of perpetrating.

Another point that I find disturbing about the Okazaki case is unlike for example robbery / murder cases or sex / murder cases there doesn't seem to have been any direct personal benefit for him in committing the crime. I don't know what kind of distinction, if any, the law makes on the matter of the motive, but to me it seems a matter of common-sense that in cases in which there is little or no apparent gain for the criminal, this should be allowed as a mitigating factor when sentencing. Like the latter case, that of Miyazaki would arouse anger, fear and hatred in the public. I suppose they would also conclude from the fact that (a) there was apparently a clear motive to the crime i.e. sexual and (b) that he was able to act rationally to the extent that he was able to evade the police and commit murder on four separate occasions that he was simply bad rather than mad. I think that in the minds of many members of the public, a person suffering from a mental illness, prone to violent crime would not be able to commit this kind of crime but would be a wild-eyed maniac, frothing at the mouth, unable to make a coherent statement, whose typical kind of crime might be to run up to a complete stranger in the street, stab them and then not make any attempt to escape. Any attempt to raise questions about whether Miyazaki or someone like him has a substantially different relationship to the world to the rest of us or for example to discover whether he was himself sexually abused as a child and to try to decide how that might affect his responsibility for his crime, are, I think, treated by a majority of people as a red herring. The fact that people's judgement is founded on their simple reasoning, highly restricted knowledge (my account of both of which is admittedly an over-simplified caricature) and emotions makes it all the more important that the Justice System does not allow its decisions to be influenced by the public. (I am absolutely not saying that anger and fear are not thoroughly proper and natural emotions to feel when faced with such crimes, only that as far as possible they should be excluded from arguments concerning criminal responsibility.) My lack of faith in the public's ability is not confined to the assessment of criminal responsibility but extends to the matter of assessment of whether the death penalty should exist or not, which is my next topic. (Before moving on, I should say that the public does not always get it wrong as it is grass roots pressure groups which are sometimes responsible for bringing to light miscarriages of justice.)

In the past, members of governments in Japan have said that the reason that the death penalty is retained is because there is wide-spread support for it among the public²⁶). That is

26) See for example Justice Minister, Maeda Isao's comments in Japan Times 4/12/94, p. 18, and Justice Minister, Nagao Ritsuko's comments in Japan Times 13/7/96, p. 1.

to say, to abolish it would not only be anti-democratic but would undermine public confidence in, and support of, law and order. One thing that strikes me about this kind of argument is that there is a sense in which the government is attempting to wash its hands of the matter. Another point is, according to Amnesty International, there was no significant public opposition to the above-mentioned de facto moratorium on executions between 1989 and 1993²⁷⁾. In England and no doubt in other countries too, capital punishment was abolished and attempts to re-instate it have failed even though, according to opinion polls, a majority of people have continued to want it kept as the ultimate sanction. On the matter of public opinion polls, Roger Hood points out that results can be misleading as they 'record immediate opinions and responses which are, of course, affected by the nature and specificity of the questions posed, their order in the sequence of questioning, the context within which the survey takes place and the socio-economic, race and gender composition of the sample.'²⁸⁾ Given also that it is highly debatable whether most people are well-informed about how capital punishment is administered in practice and all of the shortcomings of the system, it is perhaps unwise to consider public opinion an important factor when deciding on the abolition or retention of the death penalty. Most people, for example, are likely to believe in the deterrent effect of capital punishment however according to Hood, "Research has failed to provide scientific proof that executions have a greater deterrent effect than life imprisonment."²⁹⁾ The notion of retribution claimed by some to be a crucial factor in the justification of capital punishment is also by no means a straightforward matter. If you recall, the judge in the Okazaki case, gave as one of his reasons for handing down the death sentence, 'the sentiment of the victims' families'. After sentencing, the mother of the lawyer who was killed by Okazaki was quoted as saying "In a way I find the death penalty only natural because he committed such acts. In that respect, I am thankful to the judges." But she also said, "I cannot possibly feel victorious about the ruling. I abhor my feelings of wanting his death."³⁰⁾ We can see first of all that there is a distinct ambiguity in the victim's mother's reaction to the sentence of capital punishment and so it seems inaccurate to say that she would have desired it let alone have felt satisfied with it. Also if the death penalty was not on the statute books the victim's mother would not have found it a 'natural' option. Another point is that as Japan has increasingly restricted

27) Amnesty International (1997b)

28) Hood (1998), p. 215.

29) Ibid., (1998), p. 238.

30) Japan Times 24/10/98, p. 2.

its use of the death penalty both at the sentencing stage as well as the execution stage itself, only a tiny proportion of victims ever have 'the satisfaction' of seeing the forfeiture of the murderer's life as 'payment' for the life of their loved one. Kikuta points out that although one of the reasons for Japan's retention of the death penalty is for the sake of the feelings of the families of the victims, the fact is that of the roughly 1000 murders committed in a year, those that actually end up with the execution of the murderer make up less than 0.1%³¹⁾.

In conclusion then, I'd like to reiterate three of the most important points raised. First of all, the policy of secrecy regarding the administration of the death penalty is able to be interpreted in a way that throws the bureaucracy and the government in a none too favourable light. For instance, the authorities are able to hide behind this policy of secrecy when asked to explain why one particular condemned man was chosen to be executed ahead of another, giving rise to doubts about whether the decision-making was just. Secondly, to my way of thinking, the public's opinion or even the victim's relatives' opinions on a defendant's degree of responsibility or appropriate sentencing are utterly irrelevant. Thirdly, more so than in any other kind of case, in death penalty cases it is of the utmost importance to minimize the extent that luck plays in the whole proceedings.

Quite what the future holds is difficult to say. Considering that almost a decade has elapsed since the previously-mentioned U. N. Protocol came into effect and that America, 'the world's leader', has not only chosen to ignore it, but has in fact increased its execution rate over the past decade, executing more people in 1999 than in any year since 1951³²⁾, it is difficult to know what kind of pressure could bring about a change of policy in Japan. I certainly do not see any reason to view the November 1998 announcement, regarding disclosure of details of executions, as a prelude to moves towards abolition, because the various governments since 1993, have been executing many more than those in the 1980s. I have a strong hunch that the government is very sensitive to reports from human rights groups such as Amnesty International, albeit it would not wish to acknowledge this. Of course any of the industrialized countries are sensitive to charges of human rights abuses, but I think Japan would be especially so, as the only Asian member of the G-7, as a country looking for a permanent seat on the U. N. Security Council and perhaps also as there is a tendency for at least some in the government to feel a sense of inferiority in the world arena.

Finally it may be instructive to look at Japan's execution statistics from a global perspec-

31) Kikuta (1996), p. 672.

32) Amnesty International (2000a)

tive. If we do so, we can see that Kikuta is right to point out that Japan in fact uses the death penalty very sparingly. For example in 1999 Japan executed 5 people³³⁾ whereas the U.S.A. executed 98 (with Texas accounting for more than one third of the total with 35 executions) and China put at least 1077 people to death³⁴⁾. (The murder rates in the U.S.A. and China are of course considerably higher.) Also, despite America being extremely open in the whole way it administers the death penalty, which itself is a reflection of the high level of transparency throughout the government and its bureaucracy, various American states have been criticized for a number of human rights abuses in relation to their use of the death penalty, such as (a) executing people who were mentally ill (b) executing people who were minors when they committed the capital crime (c) providing a very low standard of legal representation for poor defendants and (d) sanctioning a death-penalty system which has a racial bias.

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33) *Japan Times* 11/9/99, p. 1 & 18/12/99, p. 1.

34) Amnesty International (2000b).