

## Chinese Executions and the Japanese Dog That Did Not Bark □□ 中国 による死刑に吠えなかった日本犬

David T. Johnson

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In April 2010, The People’s Republic of China executed four Japanese citizens who had been convicted of trafficking methamphetamines. They were the first Japanese to be executed in China since the two countries normalized diplomatic relations in 1972. At the time of their demise the condemned men—Akano Mitsunobu, Takeda Teruo, Mori Katsuo, and Ukai Hironori—were ages 65, 67, 67, and 48, respectively. All were killed by lethal injection in a province (Liaoning) that borders North Korea—the nation which may have been the source of the drugs—and all were either members of the *yakuza* or drug mules for them.

*The Japan Times* accurately observed that the Japanese government’s response to these state killings “amounted to little more than a shrug.”<sup>1</sup> Despite an ongoing moratorium on executions that began when the Democratic Party of Japan gained control of government in September 2009, Murakoshi Hirokami, a Member of Parliament

and secretary general of the Diet Members’ League for the Abolition of Capital Punishment, said his government could not protest China’s executions because Japan also has the death penalty.<sup>2</sup> Minister of Justice Chiba Keiko—a longtime abolitionist and the official who must sign an execution warrant in order for a hanging to occur—merely said “I am concerned about relations between Japan and China when I think of the uncomfortable feeling or reaction felt by a majority of the Japanese people. I wish China had thought about this point more.”<sup>3</sup> And Prime Minister Hatoyama Yukio provided China with a defense of sorts against the anger of his compatriots: “Because our judicial systems are different, Japanese people will naturally think that [execution] is too harsh, but people must understand that each country is different. The government will do what it can to make sure that this does not cause a rift in Japan-China ties.”<sup>4</sup>

In contrast to these official statements, human rights groups and death penalty opponents heaped scorn on the Japanese government for its taciturn and timorous response. Tagusari Maiko, the secretary general of the Center for Prisoners’

Rights Japan, said “We denounce not only China’s brutal act of killing but also the Japanese government’s failure to take action to protect its own citizens on the grounds that Japan, which also retains the death penalty and deems the punishment as necessary, should not intervene in China’s domestic issues.”<sup>5</sup> Teranaka Makoto, the director of Amnesty International Japan, said “the Japanese government should have demanded the executions be halted.”<sup>6</sup> And the Japan Federation of Bar Associations rebuked the ruling party for not doing more to try to save Japanese lives. “It is extremely regrettable that precious lives were lost because the Japanese government failed to make a clear request to protect their right to life,” the federation stated. “We once again strongly demand [the Japanese government] take a firm stand to protect its citizens’ right to life.”<sup>7</sup>



The acquiescence of Japan’s government to these executions is a puzzle for at least three reasons. First, governments are expected to do what they

can to protect the lives and welfare of their citizens. Second, Japan has not executed any drug offenders for more than a century. And third, Japanese politicians seldom miss an opportunity to punch the PRC, especially when tensions between the two countries are high or matters on the domestic front are not going well. In recent months, things have been going very badly indeed for the ruling DPJ.<sup>8</sup>

It is not at all clear, however, that more vigorous Japanese protests would have made a difference. Indeed, Britain’s aggressive protests in December 2009 failed to stop China from executing another foreigner: British citizen Akmal Shaikh, who had been convicted of trafficking heroin in the far western region of Xinjiang. Shaikh was the first European to be executed in China since 1951, when an Italian was shot alongside a Japanese man after both were convicted of plotting to assassinate Mao Zedong and other top Chinese officials. Before Shaikh’s execution, Britain’s government made numerous appeals for clemency, arguing that the former businessman suffered from manic depression and deserved a more careful mental health assessment than he was afforded by China’s criminal process.<sup>9</sup> After Shaikh was killed, British Prime Minister Gordon Brown blasted the Chinese state. “I condemn the execution of Akmal Shaikh in the strongest terms,” he said, “and I am appalled and disappointed that persistent requests for clemency have not been granted. I am

particularly concerned that no mental health statement was undertaken.”<sup>10</sup>

For the last two decades, China has carried out thousands of executions each year, accounting for at least 90 percent (and probably more) of all the executions in the world. In absolute terms, this makes China the world’s execution leader—and no other country is even close. But it is impossible to say with precision how many people China executes each year, for death penalty numbers remain a top state secret, disclosure of which is subject to severe criminal sanction (Georg Simmel once noted that “the purpose of secrecy is, above all, protection.”)<sup>11</sup> When Chinese officials talk about their death penalty policy, the volume of executions is never a number, it is an adjective, either “too large” or “very small,” depending on the purpose of the communication. But occasionally one does hear expressions of concern. After I lectured on capital punishment in Beijing in 2007, the president of the Chinese Society of Criminology responded by saying, “I don’t know what the exact number of executions in China is, but almost all Chinese students and scholars believe the figure is too large. Capital punishment has become a pain in the heart of many Chinese scholars and of many political leaders as well.”<sup>12</sup>

The closest thing to a statistical “smoking gun” for China’s death penalty is an account based on secret files of the Chinese Communist Party that reported more than 60,000 executions and police

killings for 1998 to 2001.<sup>13</sup> That would be an average of about 15,000 state killings per year, with the police killings probably accounting for less than 10 percent of the total.<sup>14</sup> This is as many persons killed each year as were executed in America from 1640 to the present, yet it is only a small fraction of the volume of state killing that occurred under Mao’s rule.

By all accounts, executions in China have declined in recent years. The 15,000 or so executions each year in the late 1990s probably fell to 5000 to 7000 by 2008—a decline of more than half in one decade.<sup>15</sup> The bottom figure of 5000 is triple the conservative estimate of 1718 executions that Amnesty International made for China in 2008.<sup>16</sup>

Whatever China’s real execution totals, Japan’s government could have done more to protest the execution of its citizens. For one thing, it could have decried China’s serious deficiencies of due process.<sup>17</sup> Before he was executed, Akano Mitsunobu said it is “unbearable to be put to death knowing that the investigation and the trial process were so shoddy,”<sup>18</sup> and in this he echoed the views of many informed China watchers.<sup>19</sup> Japan’s government also could have argued that execution for a drug offense violates international law.<sup>20</sup> Indeed, on the interpretations of the United Nations Human Rights Committee and the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, executions for drug offenses do breach human

rights law because drug offenses do not belong in the category of “most serious crimes.”<sup>21</sup>

But Japan’s government did none of these things,<sup>22</sup> mainly because its capacity to criticize capital punishment—however inappropriate an execution might be—has been severely disabled by its repeated claims that the death penalty is not a human rights issue, it is a matter of domestic criminal justice. In this respect, the Japanese dog that did not bark reflects one of the central truths about the status of capital punishment in the world today.

There are two ways of framing capital punishment in the contemporary world, and both were on display in Japanese reactions to China’s executions and also in the debate on the death penalty that occurred in the United Nations General Assembly in the fall of 2007. At its core, the UN debate was a contest between two views of the character of capital punishment in the modern world. Proponents of a non-binding resolution calling for a moratorium on state executions regarded the execution of criminal offenders as a human rights problem that requires a universal limit on governmental power applicable to all civilized nations. On this view, the abolition of capital punishment is a moral imperative, and nations that have already abolished are not only justified but encouraged to export abolition to the rest of the world. In contrast, opponents of the UN resolution argued for national autonomy in decisions about death

as a punishment, claiming that whether to execute criminal offenders is a question of which sanctions are necessary and effective, a matter best left to sovereign nations to settle for themselves.

The UN resolution passed by a wide margin: 104 in favor versus 54 opposed, with 29 abstentions (Japan and China both opposed it).<sup>23</sup> Although the ultimate issue—whether state executions should be forbidden by general human rights principles or permitted to nations that wish to conduct them—is far from resolved, the rights frame is clearly in the ascendant. As this way of perceiving capital punishment takes deeper hold—state killing as a denial of the universal human rights to life and to freedom from cruel and degrading punishment—the death penalty will likely continue to decline.<sup>24</sup> That, anyway, is what has happened so far. As of 1970, when capital punishment was still widely considered a question of domestic crime control policy, only 21 nations had abolished for all crimes or for “ordinary offenses” (that is, all crimes except insurrection and offenses committed in wartime). Today the total is 103, and 36 more retain it in law but have not executed anyone for at least ten years. By contrast, 58 nations retain capital punishment and continue to carry out executions. Thus, we now live in a world in which 70 percent of all countries have abolished the death penalty in law or practice.

Of course, Asia remains the regional center of

capital punishment in the contemporary world (and literally and ideographically, China is the “central country”), but the death penalty is declining there, too.<sup>25</sup> In the years to come, what happens in China, Japan, and other nations in the region will reveal whether the campaign against state killing that has gained momentum since World War Two becomes a truly global phenomenon.

In my view it probably will, for the long-term trends that undermine and stigmatize state executions in the West are occurring in Asia as well. When development and plural democracy take root in Asia, the decline of death as a punishment is often one result. The most striking Asian examples of this pattern are South Korea, which has not executed since 1997, and Taiwan, which did not execute between 2006 and 2009. That both are “divided countries” in which their “other half” frequently executes makes these cessations all the more remarkable. Conversely, when authoritarian governments persevere with capital punishment (as in China, Vietnam, and Singapore), progress in restraining the volume of executions tends to depend as much on external pressure as on domestic initiatives. In Singapore, executions fell from a total of 209 in 1995-99 to 15 in 2005-09—a 93 percent drop in ten years.<sup>26</sup> The key mechanism in the causal process that produced this decline seems to be the recognition that being called “Disneyland with the death penalty” is not the kind of PR this city-state

wants.<sup>27</sup>

A leading authority on capital punishment in the PRC believes “the fact that China today executes many more people than the rest of the world combined is one that today shames the country internationally more than any other single question.”<sup>28</sup> The Chinese Communist Party has said that it intends to abolish capital punishment—eventually.<sup>29</sup> But since we might all be dead in that long run, the good news for the more immediate future is that international norms and external pressures can inhibit the death penalty in China and elsewhere, and that modern states experience no great benefits from executing common criminals—and therefore no large material costs to ending the practice. Capital punishment is not an issue like air or water pollution in which compliance with international norms carries significant costs for the domestic economy. The pace toward ending executions is slow more because the incentives to quit capital punishment are weak than because the costs of abolition are high. Time will tell what incentives might induce China and Japan to retire their executioners.

*David T. Johnson is Professor of Sociology at the University of Hawaii and co-author (with Franklin E. Zimring) of The Next Frontier: National Development* (<http://www.amazon.com/dp/0195382455/?tag>

=theasipacjo0b-20), Political Change, and the Death Penalty in Asia (<http://www.amazon.com/dp/0195382455/?tag=theasipacjo0b-20>) (Oxford University Press, 2009).

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Notes

<sup>1</sup> Philip Brator, "China Executions Should Have More Japanese Talking." *The Japan Times*, April 18, 2010.

<sup>2</sup> *The Daily Yomiuri* "Govt's Tepid Response over Executions Draws Ire." April 10, 2010.

<sup>3</sup> Quoted in Susan Stumme, "China Executes Three Japanese Drug Smugglers." Agence France Presse, April 10, 2010.

<sup>4</sup> *Shanghai Daily* "Japanese Executed, 3 More on Death Row." April 7, 2010.

<sup>5</sup> Tagusari Maiko, "Statement on Imminent Execution of Japanese Citizens by China." Center for Prisoners' Rights Japan, April 10, 2010.

<sup>6</sup> Quoted in *The Daily Yomiuri* "Govt's Tepid Response Over Executions Draws Ire." April 10, 2010.

<sup>7</sup> Quoted in *The Daily Yomiuri* "Govt's Tepid Response Over Executions Draws Ire." April 10, 2010.

<sup>8</sup> A Nikkei newspaper poll released two weeks after the executions revealed that two out of three Japanese voters disapproved of Prime Minister Hatoyama, and nearly 60 percent thought he should resign if he fails to resolve a feud over a U.S. airbase in Okinawa by the end of May. See Isabel Reynolds, "Japan PM Support Falls As Base Row Heats Up," *The Washington Post* April 26, 2010.

<sup>9</sup> David Barboza, "China Executes Briton Despite Appeals for Mercy." *The New York Times* December 30, 2009; and Loretta Chao, "China Ignores Appeals, Executes Briton." *The Wall Street Journal* December 30, 2009.

<sup>10</sup> Reuters, "China Executes Briton Over Drugs; Brown Slams Decision." December 29, 2010.

<sup>11</sup> *The Sociology of Georg Simmel* edited and translated by Kurt Wolff (Free Press, 1965).

<sup>12</sup> David T. Johnson and Franklin E. Zimring, *The Next Frontier: National Development, Political Change, and the Death Penalty in Asia* (Oxford University Press, 2009), p.233.

<sup>13</sup> Andrew J. Nathan and Bruce Gilley, *China's New Rulers: The Secret Files* (New York Review Books, 2nd edition, 2003), p.218.

<sup>14</sup> Johnson and Zimring, *The Next Frontier*, p.238.

<sup>15</sup> Bill Schiller, "In China, a Quiet Push Against Executions." *Toronto Star* March 29, 2009.

<sup>16</sup> When executions are secret and unreported in the media (as they frequently are in China and some other nations), Amnesty's totals significantly underestimate execution volume. See Johnson and Zimring, *The Next Frontier*, p.234.

<sup>17</sup> Japan might also have protested the killing of three senior citizens, though this would have been a hard sell coming from a government that

has executed many geriatric residents of its own death rows. See Johnson and Zimring, *The Next Frontier*, p.87; and Amnesty International, "Japan: Hanging by a Thread: Mental Health and the Death Penalty in Japan" (September 10, 2009), link

(<http://www.amnesty.org/en/library/info/ASA22/005/2009/en>).

<sup>18</sup> Nishimura Daisuke, "Death Row Inmate: China Trial 'Shoddy'." *asahi.com*. April 3, 2010.

<sup>19</sup> See, for example, Susan Trevaskes, *Courts and Criminal Justice in Contemporary China* (Lexington, 2007); Hong Lu and Terance D. Miethe, *China's Death Penalty: History, Law, and Contemporary Practices* (Routledge, 2007); and Klaus Muhlhahn, *Criminal Justice in China: A History* (Harvard University Press, 2009).

<sup>20</sup> As of April 2010, 58 nations retain the death penalty and 32 of them retain it for drug offenses, including 16 nations in Asia: China, Vietnam, Singapore, Malaysia, Indonesia, Thailand, Pakistan, North Korea, South Korea, Bangladesh, Laos, Taiwan, India, Myanmar, Sri Lanka, and Brunei-Darussalam. Of these 16, only China, Vietnam, Singapore, and perhaps Malaysia execute drug offenders on a regular basis. See Patrick Gallahue and Rick Lines, "The Death Penalty for Drug Offences: Global Overview 2010," International Harm Reduction Association (forthcoming).

<sup>21</sup> According to Article 6(2) of the International

Covenant on Civil and Political Rights, “In countries which have not abolished the death penalty, sentence of death may be imposed only for the *most serious crimes* in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court” (emphasis added). See also Katie Lee, “China and the International Covenant on Civil and Political Rights: Prospects and Challenges,” *Chinese Journal of International Law* Vol.6, No.2 (2007): 445-474.

<sup>22</sup> Journalist Philip Brator, summarizing the views of former Judge Kitani Akira, wonders if Japan’s government lacks the “moral authority” to protest Chinese executions because its own judges are too afraid of acquitting the guilty and too little worried about the possibility of sending innocent persons to death (“China Executions Should Have More Japanese Talking,” *The Japan Times*, April 18, 2010). Although these are reasonable concerns, Japan’s low acquittal rates are mainly the result of prosecutors’ conservative charging policy, not judges’ reluctance to acquit. See David T. Johnson, *The Japanese Way of Justice: Prosecuting Crime in Japan* (Oxford University Press, 2002), chapter 7.

<sup>23</sup> Asian nations voted on the United Nations moratorium resolution as follows. In favor:

Australia, Cambodia, East Timor, Nepal, New Zealand, the Philippines, and Sri Lanka. Opposed: Bangladesh, Brunei Darussalam, China, India, Indonesia, Japan, Malaysia, Maldives, Mongolia, Myanmar, North Korea, Pakistan, Papua New Guinea, Singapore, and Thailand. Abstained: Bhutan, Laos, South Korea, and Vietnam. Thus, all of the retentionist Asian nations except Vietnam opposed the resolution, and all of the completely abolitionist nations in Asia except Bhutan supported it. The seven “abolitionist de facto” Asian jurisdictions were split: Sri Lanka supported the resolution, Brunei Darussalam, the Maldives, Myanmar, and Papua New Guinea opposed it, and Laos and South Korea abstained. See Johnson and Zimring, *The Next Frontier* p.343.

<sup>24</sup> Roger Hood and Carolyn Hoyle, “Abolishing the Death Penalty Worldwide: The Impact of a ‘New Dynamic’”, in *Crime and Justice: A Review of Research* edited by Michael Tonry (University of Chicago Press, 2009), Vol.38, pp.1-63.

<sup>25</sup> David T. Johnson and Franklin E. Zimring, “Death Penalty Lessons from Asia,” *The Asia-Pacific Journal* Vol. 39-1-09, September 28, 2009. Available [here](http://www.japanfocus.org/-David_T_-Johnson/3228) (http://www.japanfocus.org/-David\_T\_-Johnson/3228).

<sup>26</sup> Franklin E. Zimring, Jeffrey Fagan, and David T. Johnson, “Executions, Deterrence, and Homicide: A Tale of Two Cities,” *Journal of*

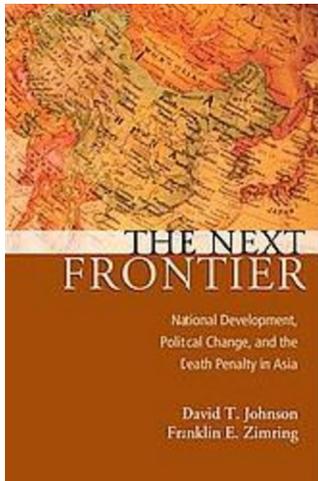
*Empirical Legal Studies* Vol.7 Issue 1 (March 2010), p.7.

<sup>27</sup> Ian Buruma, *Bad Elements: Chinese Rebels from Los Angeles to Beijing* (Vintage, 2001), p.135; and Johnson and Zimring, *The Next Frontier*, p.418.

<sup>28</sup> University of Hong Kong Professor of Sociology Borge Bakken, in his review of Astrid Maier's *Die Todesstrafe in der VR China* [The Death Penalty in the People's Republic of China], in *China Journal*, Vol.57, January 2007, pp.180-182.

Similarly, New York University Professor of Law Jerome A. Cohen believes "the Chinese government is so embarrassed by the number of executions it carries out that the precise figure is one of its most closely-guarded secrets" ("Law in Political Transitions: Lessons from East Asia and the Road Ahead for China," *New York University Journal of International Law and Politics* Vol.37, p.427).

<sup>29</sup> Johnson and Zimring, *The Next Frontier*, p.284.



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