The Asia-Pacific Journal | Japan Focus

Volume 7 | Issue 39 | Number 1 | Article ID 3228 | Sep 28, 2009

Death Penalty Lessons from Asia

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死刑にかんするアジアからの教訓

David T. Johnson and Franklin E. Zimring

The comparative study of death penalty policy is a relatively new and unpracticed discipline, and few of the existing studies concentrate on regional rather than global comparisons.[1] This article makes the case for a regional approach by summarizing some of the most important findings from our book about capital punishment in Asia.[2] That book is based on five major case studies of capital punishment in Japan, the Philippines, South Korea, Taiwan, and China (chapters 3-7), and seven shorter case studies of capital punishment in North Korea, Hong Kong and Macao, Vietnam, Thailand, Singapore, and India (appendices A-F).

Part one of this article summarizes death penalty policy and practice in the region that accounts for 60 percent of the world's population and more than 90 percent of the world's executions. The lessons from Asia are then organized into three parts. Part two describes features of death penalty policy in Asia that are *consistent* with the experiences recorded in Europe and with the theories developed to explain Western changes. Part three identifies some of the most significant *diversities* within the Asian region – in rates of execution, trends over time, and patterns of change – that contrast with the recent history of capital punishment in non-Asian locations and therefore challenge conventional interpretations of death penalty policy and change. Part four discusses three ways that the politics of capital punishment in Asia are *distinctive*: the limited role of international standards and transnational influences in most Asian jurisdictions; the presence of single-party domination in several Asian political systems; and the persistence of communist versions of capital punishment in the Asia region.

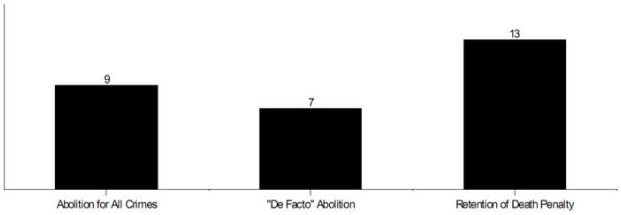
Overall, the study of death penalty policy in Asia confirms many of the major themes that have emerged from studies of the post-war European and Commonwealth experiences. Most notably, there have been declines in executions as a tool of crime control and in the political reputation of state execution in the region. Economic development and political democracy are both correlated with declining executions and with the abolition of capital punishment, but neither prosperity nor democracy is a sufficient condition for ending the death penalty. Concerns about the concentration of state power and its misuse are as prominent a theme in anti-death penalty rhetoric in Asia as they are in the West, and the most important feature of Asian nations that predicts their level of execution is not culture or crime rate but rather the nature of the political regime. Only authoritarian governments execute with any frequency in Asia, and most of the hard line authoritarian states in Asia where high rates of execution continue to occur are communist. Thus, while the political circumstances of Asia are different from those found in other parts of the world, the influence of political characteristics on death penalty policy are similar.

Overview of Asian Death Penalty Policies and Practices

https://doi.org/10.1017/S1557466009008699 Published online by Cambridge University Press

Figure 1 uses Amnesty International's capital punishment categories to display some of the variety in death penalty policy that exists among governments in contemporary Asia. The 29 Asian jurisdictions divide into 13 with both legal retention of the death penalty and at least one execution in the previous ten years, and 16 with either formal abolition or "de facto" abolition status (more than ten years without execution).

Figure 1. Status of the Death Penalty in 29 Asian Jurisdictions



As of September 2009, the jurisdictions are as follows. *Abolition for all crimes:* Australia (abolished in 1985), Bhutan (2004), Cambodia (1989), East Timor (1999), Hong Kong (1993), Macao, Nepal (1997), New Zealand (1989), The Philippines (2006). "*De facto*" *abolition:* Brunei Darussalam (last execution in 1957), Laos (1989), Maldives (1952), Myanmar (1989), Papua New Guinea (1950), South Korea (1997), Sri Lanka (1976). *Retention:* Bangladesh, China, India, Indonesia, Japan, Malaysia, Mongolia, North Korea, Pakistan, Singapore, Taiwan, Thailand, Vietnam.

Notes: (1) No jurisdiction in Asia has abolished capital punishment for "ordinary crimes only." (2) The "Special Administrative Regions" of Hong Kong and Macao, do not have capital punishment, but offenders can be executed in China through the process of "rendition." (3) Macao did not carry out any executions for more than a century before it reverted to Chinese control in 1999, and in 1995 a proscriptions against capital punishment was included in its new Penal Code.

Source: Johnson and Zimring, *The Next Frontier*, p.16.

Although the death penalty has declined or disappeared in many Asian nations, the almost 50-50 split in Figure 1 fails to reflect the actual balance of death penalty policy in the region because almost all of the major population centers in Asia remain retentionist. Indeed, some 95 percent of the residents of the region live in jurisdictions that continue to use capital punishment.

Yet the impression of uniformity that comes from classifying such a high proportion of the region's population as living in executing states breaks down when attention is paid to the character of capital punishment policy. Consider the world's two most populous nations, India and China. Both are "retentionist" in the Amnesty International sense, and neither provides precise or transparent statistics on execution activity, but India, with a present population of 1.2 billion, executed only one person in the ten years between 1999 and 2008, for an annual rate per million persons that is about 1/3000th that for the United States over the same period of time. China, by contrast, with 1.3 billion in population, has carried out at least 2000 and sometimes more than 10,000 executions per year in recent years, a rate per million (at the high end of the Chinese range) that is tens of thousands of times higher than the rate in its giant neighbor to the south and dozens of times higher than the rate in the United States.

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Execution by rifle in China



In 1996, China began using lethal injection vans in some jurisdictions, though execution by rifle still occurs in many parts of the country.

Table 1 presents execution totals and rates per million population for 2007 in the same 29 Asian jurisdictions that appear in Figure 1. For nations that do not provide reliable execution statistics we have listed the best available estimate. Although there is some margin of error in these estimates, we do know that 21 of the 29 jurisdictions—almost three-quarters—did not carry out a single execution in 2007. Of the 8 jurisdictions that did execute, three—Japan, Bangladesh, and Indonesia—had execution rates one-half or less that for the United States,[3] and at least three more—Pakistan, Singapore, and Vietnam—had execution rates lower than that for the American state of Texas. If the China estimate of 6000 executions for 2007 is close to accurate, and if North Korea executed 100 or fewer persons in the same year, then China carried out at least 95 percent of all the executions in Asia in the most recent year for which evidence is available.

Table 1. Execution Totals and Rates in 29 Asian Jurisdictions, 2007

Nation	Number of Executions	Execution Rate per million population
China	6000	4.7
Pakistan	135	0.8
Singapore	2	0.5
Vietnam	25	0.3
North Korea	N/A	N/A
Japan	9	0.07
Bangladesh	6	0.04
Indonesia	1	0.004
Australia	0	0
Bhutan	0	0
Brunei	0	0
Cambodia	0	0
East Timor	0	0
Hong Kong	0	0
India	0	0
Laos	0	0
Macao	0	0
Malaysia	0	0
Maldives	0	0
Mongolia	0	0
Myanmar	0	0
Nepal	0	0
New Zealand	0	0
Papua N.G.	0	0
Philippines	0	0
South Korea	0	0
Sri Lanka	0	0
Taiwan	0	0
Thailand	0	0
United States	42	0.14
Texas	26	1.1
Rest of U.S.	16	0.06

Notes: (1) For a summary of what is known about executions in North Korea, see Johnson and Zimring, *The Next Frontier*, pp.359-364. (2) The "Special Administrative Regions" of Hong Kong and Macao are listed separately from China because their death penalty decisions are made independently. (3) The United States and Texas are included for comparative purposes.
Sources: Johnson and Zimring, The Next

https://doi.org/10.1017/S1557466009008699 Published online by Cambridge University Press

Frontier, p.35; www.deathpenaltyinfo.org.

Rates of execution are not the only differences to be found among Asian nations lumped together in the same death penalty category, for many retentionist nations have gone long periods of time without execution. Among populous countries with discretionary non-execution moratoria one can count Japan (1989-1992), Thailand (1988-1995 and 2004-2008), India (1999-2003 and 2005-2008), Indonesia (1949 –1973 and 1996-2000), Malaysia (1969-1980, 1997-2000, and 2003-2005), and Bangladesh (1989-1992 and 1998-2001). Thus, at least 6 of the 13 retentionist nations in Asia have had protracted periods without execution. In addition, the suspension of executions (as in South Korea, which has not executed since 1997 after averaging 14 per year over the previous 35 years) and sharp reductions in execution volume (as in Taiwan, which saw executions drop from 78 in 1990 to none at all since 2005) are sometimes intended as a transitional stage on the road to abolition. In China, too, there is now discussion of a "kill less, kill carefully" policy as the first step on the road to ultimate abolition, though current rates of execution are so high and the nation is so large that even steep declines from the average of 15,000 executions a year between 1998 and 2001 still leave the PRC with world-leading execution volumes.[4] Hands Off Cain, an anti-death penalty organization, estimates that China carried out at least 5000 executions in 2008, which would be a two-thirds decline in only a decade but a volume that still would account for about 90 percent of all the executions in the world.[5]



Executions in Thailand formerly took place as shown, though the shooter is standing closer in this simulation than he did at the real event.



Thailand switched to lethal injection in 2003; since then it has executed six people with this method.

At the highest levels of execution in Asia, one finds retentionist nations that rely on capital punishment for crime control and a level of usage long absent from nations in the developed West. In recent years, China, Vietnam, North Korea, and Singapore all have carried out executions so frequently that there are some categories of crime for which death is a frequently used criminal sanction rather than a one-in-a-1000 penalty of chiefly symbolic importance.[6] There may be more of a contrast between nations such as these, which use execution to practical effect, and low-use

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countries such as India and Indonesia, than there is between states with death penalties in their statute books and those without. In some cases, the huge differences within the retentionist category reflect different stages of evolving death penalty policy. South Korea and Taiwan had much higher rates of execution a generation ago than in recent years, and the decline in the former has been so great and so sustained that South Korea now belongs in the *abolitionist de facto* category (because it has not carried out any executions for more than 10 years). In other cases such as India, Indonesia, and Japan, execution rates have been low for decades, though in Japan they recently have risen along with a wave of populist punitivism, from 1 or 2 per year from 2001 to 2005, to 4 in 2006, 9 in 2007, and 15 in 2008.[7]

Finally, nations with large Islamic populations are in the retentionist category in Asia as they are in the Middle East, but in Asia, which is home to about two-thirds of the world's Muslim population, most of those nations are concentrated at the low-execution end of the category. Several Asian nations with large Muslim populations have also recently gone long periods without execution. In Indonesia, the most populous Muslim-majority country in the world, there were at least 91 persons on death row as of 2007, but in the preceding two decades there were fewer than 20 executions. In Malaysia, which had about 300 persons on death row in 2007, there were only 12 executions in the first eight years of the new millennium, a major decline from an average of more than 10 executions per year over the previous four decades. And in Bangladesh, the execution rate between 1997 and 2005 was only 1/20th the rate in the United States and less than 1/00th the rate in Texas. Most of these Muslim-majority, low-execution nations have governments with secular rather than religious orientations, but the tiny nation of Brunei Darussalam has combined an Islamic theocratic regime with no executions for the past half-century. And within Asia, a high concentration of Muslim population is not found in most of those nations – China, Singapore, North Korea, and Vietnam – that have the highest levels of execution (the only exception is Pakistan). If Islam is an obstacle to death penalty reform, as some states and scholars contend, it is not clearly so in the Asia region.[8]

Asian Consistencies

Scholarship about modern trends in capital punishment and the causes and contexts of death penalty decline is based almost exclusively on accounts of Western history. But how many of the significant aspects of that story appear in Asian experiences? The number of parallels and the importance of each are to some extent a function of the judgment of the observer, but in our view the available evidence reveals at least eight common elements in the histories of capital punishment in Asia and the West. These are: (1) a long-term decline in the use of death as a criminal sanction; (2) a recent decline in executions; (3) a strong but not universal tendency for economically developed nations to curtail executions and consider abolition; (4) an even stronger relationship between the character of government (democratic versus authoritarian) and the extent to which capital punishment is accepted and employed by political elites; (5) the declining importance of capital punishment for crime control; (6) the common causation of two forms of state killing—judicial and extra-judicial execution; (7) reliance on "leadership from the front" rather than public opinion to change death penalty policy; and (8) the increased salience of "human rights" and "limits of government" perspectives in death penalty discourse.

Long-Term Decline

From Emile Durkheim's "two laws of penal evolution" to more empirically-oriented histories of punishment, many studies conclude that there has been a long-term shift away from

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executions and toward lesser punishments in Western countries. By the late 18th century, a long, slow, and uneven decline was in progress in several Western nations, though actual abolition of capital punishment did not begin until the 1860s. By the turn of the 20th century, the death penalty had become an exceptional punishment in all Western democracies, reserved for only the most serious offenses, rarely imposed, and regarded as a particularly problematic governmental practice. This broad decline in Europe was interrupted after 1930 by a regressive torrent of state-killing in Germany, Russia, and (to a lesser extent) Italy and Spain, but the long-term trend resumed at war's end in 1945. In the United States and its antecedent colonies, the execution rate dropped from more than 25 per million population in 1650, to 8 per million in 1750, to 2 per million in 1850, to no executions at all from June 1967 to January 1977—an unofficial moratorium of nearly ten years.[9] After that, executions spiked, reaching a peak of 98 in 1999 (0.35 per million population), before falling to 38 in 2008 (0.12)—a 62 percent decline in the most recent decade.[10] Over the same ten years, the total volume of death sentences in the United States also declined by more than 60 percent (from 284 in 1999 to 111 in 2008), partly because of growing concerns about miscarriages of justice in capital cases. Since 1973, more than 130 inmates on American death rows have been exonerated and released because of evidence of their innocence.[11]

Long-term data on patterns in Asia are not plentiful, but the general pattern found in most Asian nations does seem consistent with the Western stories. There were dramatic execution declines in Japan late in the 19th century—a 97 percent drop from 1870 to 1900—and Indonesia has had low rates of judicial execution since 1945, as has Thailand since 1940. Execution levels have also declined in the abolitionist nations of Australia, New Zealand, Cambodia, East Timor, Nepal, Bhutan, and the Philippines, and in the de facto abolitionist nations of Laos, Myanmar, Brunei, the Maldives, Papua New Guinea, and Sri Lanka. In Hong Kong, executions started to decline in the 1950s and stopped altogether in 1967, and in Macao there have been no executions for more than a century. In India, executions have declined from an annual average of more than 160 between 1954 and 1963 to only a single execution in the 11 years since 1998.[12]

The general trend down in Asia was interrupted by explosions of state killing at mid-century in China and Taiwan and by a somewhat smaller concentration in South Korea around the same period. These surges in state-killing may be slightly later parallels to the European eruptions that occurred between 1930 and 1945. By the 1980s, most Asian nations had rates of execution well below the level necessary to play an important role in crime control. If the mid-century increases are treated as temporary interruptions of a long-term, downward trend, then the significant drops and stoppages in places such as Taiwan and South Korea can also be considered part of the broader pattern.

But what about China's half-century of high execution rates? On the one hand, even the four and five digit execution volumes in recent years are a substantial decline from the levels of execution that prevailed during the revolutionary decades of the early People's Republic. On the other hand, a streak this long has no parallel in Europe and must therefore be regarded as an exception to the more general pattern. Still, the long-term pattern elsewhere in Asia does conform to the most prominent pattern in Western history, and since most of the region lagged behind the West in rates of industrial growth until the last third of the 20th century, one might expect a similar lag in the decline of executions outside Asia's earliest developers, Japan and Singapore. The high rates of execution that persist in some Asian

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nations might then be considered temporary differences. Unfortunately, the data are too thin and the time too early to test this theory of lag. The generality of the downward trend over time is easier to discern than its causes or ultimate course.

Recent Declines and Recurrent Periods without Execution

The patterns in most Asian nations over the last generation are consistent with the longer-term declines in prevalence of executions, and as Table 1 shows, many places in Asia now have execution rates of zero or close to zero. The decline in recent years is striking. In 2007, only 8 of 29 Asian jurisdictions had at least one execution, a decline in the number of executing jurisdictions of nearly 40 percent since 1995. Only 5 of the 29 conducted executions every year between 1995 and 2007. In South Korea, a ten-year period without execution is widely viewed as a stage in the transition toward abolition, and Taiwan (in 2006) recently joined it as an Asian nation with no executions. The Philippines is the only large Asian nation to abolish in recent years, but several other nations have self-consciously moved closer to abolition, and in many other nations executions have become rare events.

But if recent Asian trends are downward, there are exceptions to this trend. In Japan, death sentences have surged during the last decade and executions have risen from an average of 4 per year from 1993 to 2005 to an average of almost one per month from 2006 to 2009.[13] In Pakistan, there were almost three times more executions in 2007 (135) than there were in the five years between 1996 and 2000 (47). And in Indonesia, after only 14 persons were executed between 1995 and 2007—an average of one a year—at least 9 were executed in 2008, including the execution by firing squad of three persons who had been convicted of killing 202 in the Bali bomb attacks of 2002.[14] The Asian nations that have participated in a death penalty downturn have also maintained a pace away from execution that is slower than Eastern Europe after 1990 but similar to the less-developed countries of Africa, though this Asian pattern has more exceptions than are found in the recent histories of some other regions. The higher variability in execution policy makes Asia a particularly interesting venue in which to search for the political, economic, and cultural factors that explain the variation.

Economic Development and Death Penalty Decline

There are two bodies of evidence that suggest economic development encourages decline in judicial execution and steps toward the cessation of capital punishment. The first is a cross-sectional pattern. In recent years, Asia's least prosperous nations have been twice as likely as its most prosperous ones to have carried out executions, while nations with middling levels of per capita GDP have been in the middle position on execution prevalence.[15] These findings suggest that prosperity is neither a necessary nor a sufficient condition for the abolition of capital punishment. Cambodia, Nepal, Bhutan, and East Timor are some of Asia's poorest states, and the Philippines lags well behind the monumental success stories of East Asian economic development, yet all of these nations have abolished the death penalty. Japan, on the other hand, has been rich for many decades and yet still retains capital punishment, while Singapore is simultaneously one of Asia's most prosperous places and one of its most aggressive executing states.[16]

The other evidence on the relationship between economic development and the end of executions concerns the economic status of two "vanguard" nations: South Korea and Taiwan. As recently as 1995, both of these countries (along with Japan and Singapore) could have been cited as clear examples that economic

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development does not necessarily produce major death penalty declines, since three decades of rapid growth had produced no discernible reduction in executions or progress toward the abolition of capital punishment. But over the next decade campaigns against execution advanced in both nations. Why? One possibility is that the push toward ending executions in these two high-growth nations happened by chance. Contingency is frequently a critical factor in the making of history, and while the elections of Presidents Kim Dae Jung and Chen Shui-bian can be explained retrospectively, they were not predictable ex ante. But a more satisfying and persuasive explanation for the Korean and Taiwanese death penalty dynamic during the last decade is that economic development fostered technological, educational, and moral improvements in both nations that ultimately produced pressures toward political reform and democratization.[17] On this account, economic development created the conditions in which political change was more likely to occur, and the latter was the precipitant for changes in death penalty policy.

If this is part of the story behind the decline of capital punishment in South Korea and Taiwan, then two more conclusions follow. First, the (eventual) role of economic development in altering death penalty policy is stronger than some cross-sectional comparisons suggest. Observers must wait for the intermediate changes in social and political structures to occur before they can see the full effects of economic growth. One interpretation of the atypical positions of China and Singapore in cross-national studies of the relationship between rights and economic development is that under some conditions, even twenty-five years of development may not be sufficient for the effects of economic growth to manifest themselves in a society's political institutions.

But the question persists: if the explanatory power of economic development is strong, why hasn't Japan (or Singapore or the United States) abolished capital punishment? The second conclusion that follows from considering current reality in the two Asian "vanguards" is the importance of explaining why developed nations such as Japan and Singapore differ so much from South Korea and Taiwan in their death penalty policies. For those interested in the Asian future, this question assumes special importance. The central issue seems to be the relationship between prosperity and plural democracy. Does economic development eventually produce liberal multi-party democracy, or can less responsive and more paternalistic regimes survive even long-term prosperity? The long-term dominance of the People's Action Party in Singapore and the Liberal Democratic Party in Japan suggests that unprogressive regimes can thrive for long periods of time in wealthy nations, but the jury is still out on this important issue.

The Influence of Character of Government on Death Penalty Policy and Practice

The experience of twentieth-century Europe reveals the importance of government orientation on death penalty policy in three ways. The first is the obvious affection of fascist and totalitarian governments for high rates of execution. The Nazi and Soviet experiences are well known, and the reversal of abolition by Mussolini in 1930 and state-killing in Spain by Franco's regime would have achieved greater notoriety if their actions had not been overshadowed by Hitler and Stalin. The second set of Western evidence that governmental character influences capital punishment was the rapid move toward abolition during two political transitions: the defeat of the Axis powers in 1945, and the end of Soviet hegemony in Central and Eastern Europe in 1989. Taking both transitions together, new regimes abolished the death penalty within five years of governmental change in a total of 13 nations.[18] The third piece of Western evidence

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comes from the timing of the end of the death penalty in three European nations that retained the death penalty after 1950. Abolition started in England in 1965, continued in Spain in the mid-1970s, and culminated with France in 1981. In each of these episodes, a transition of government from right-of-center to left-of-center precipitated legal change. In two of the cases – England and France – the transitions were the result of scheduled elections, while for Spain the transition that triggered abolition was a shift away from the rightist, authoritarian government of Franco.

Because the range of political differences is much broader in contemporary Asia than in post-war Europe, the influence of character of government on death penalty policy should be more visible – and it is. The cross-sectional and historical experiences in Asia both indicate that the general political orientation of a government is a major shaper of death penalty policy. A cross-sectional tour of Asia in 2007 implicates governmental orientation at both ends of the execution spectrum. Depending on the true execution rates in North Korea and Vietnam (where government secrecy shrouds reality), there are between two and five high execution rate nations in Asia – China and Singapore are the surest members of this club, and Pakistan may belong in some years – and all have highly authoritarian governments. Were it not for high-rate American states such as Texas, Virginia, and Oklahoma, we would be tempted to conclude that an authoritarian government is a necessary condition for persistently high rates of judicial execution as criminal punishment.

One common explanation for high rates of execution is culture or public opinion, but the distribution of execution policy in Asia demonstrates that this account is wrong. Singapore's strongman, Lee Kuan Yew, attributed his nation's high volume of executions to "Asian values" and a preference for collective over individual interests, but neither public opinion nor cultural features can explain patterns of execution in his society or in the rest of Asia. Public opinion supports capital punishment for serious crime all over the region, but executions occur frequently only in a handful of states.[19] Most Asian nations that retain the death penalty use it rarely, and the cultural differences between Hong Kong and Singapore, Singapore and Malaysia, and North and South Korea are not nearly large enough to explain their huge differences in execution policy.[20]

If cross-sectional comparisons in contemporary Asia suggest the importance of political influences on executions, the patterns over time are decisive. It is one thing to posit intrinsic differences between Singapore and Malaysia that might help explain persistent differences in execution rates, but why has Singapore's rate stayed so high while the Malaysian rate has dropped so substantially? Has there been rapid cultural change in Kuala Lumpur but not across the Straits? The reality of political change and seismic shifts in execution policy in South Korea and Taiwan is the strongest evidence we found of the powerful and primary role of democratization and changing structures of government in stimulating change in execution policy. The evidence that political change played a key causal role in these two jurisdictions is not a statistical inference from multivariate regression models but rather the conspicuous center of their recent histories. It is difficult to imagine a more compelling demonstration of the political influences on capital punishment than the tale of these two nations.

More subtle political processes also provide insight into some other puzzles of recent Asian history. Japan has one of Asia's most developed democracies and has been governed almost continuously by the Liberal Democratic Party since 1955. This is the equivalent of the Gaullists remaining in power in France not until 1981 (when abolition occurred) but for at

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least two decades thereafter. The persistence of capital punishment in Japan may be explained by the failure of a left-of-center party to take control of government, although this reductionistic account requires some explanation of that failure – such as the LDP's responsiveness to public opinion. At the same time, some changes in Asian death penalty policy were not the product of changes in political structure or of the end of control by a government of the right. The second abolition in the Philippines (in 2006), for example, was a byproduct of a minor shift in politics even though the first abolition (in 1987) was the result of a classic right-to-left transfer of power. Similarly, the downward trend of executions in Malaysia seems attributable to gradual changes in governance. Not all of the causal action in Asian capital punishment occurs in the political sphere, but much of it does.

The Declining Importance of Capital Punishment for Crime Control

Most of Asia, like most of the rest of the world, controls crime and punishes offenders without significantly relying on executions. The most important dividing line is not between the 13 Asian jurisdictions that continue to execute and the 16 that do not (see Figure 1), but between the 25 nations with zero or near-zero execution levels and the four or five in which execution remains an operational feature of criminal justice. For 90 percent of Asian governments, capital punishment is an absent or marginal feature of efforts to control crime, and the symbolic role of executions in places such as Indonesia, Malaysia, India, Japan, and Thailand is close to the pattern that prevailed in Western Europe during the 1950s. Execution policy in the PRC, Singapore, Vietnam, and North Korea is different and will be discussed later in this article. Some large Asian nations, such as India and Indonesia, have had tiny execution levels for many years. In other places, like Taiwan and South Korea, the trajectory turned downward recently as the result of conscious policy change.

Common Causation in State Killing

Execution as punishment for crime is only one form of killing that state agents commit. In addition to waging war, some officials of the state kill while making arrests or responding to attacks from insurgents, and in many circumstances governments use police, military, or other armed personnel to kill persons who have not even been tried for crimes, much less sentenced to death. Such proactive government killing violates values of personal dignity and individual liberty and contradicts principles of due process and "power control." One critical issue is the relationship between death as a criminal penalty and the rates of death from other forms of proactive state killing. There appear to be three possibilities: independence, complementarity, and common causation.

The *independence* hypothesis posits that rates of capital punishment and rates of other forms of proactive state killing are unrelated. On this view, knowing that a state does not conduct judicial executions tells little about whether its rate of proactive extra-judicial killing is high or low. The second theory is that capital punishment may reduce the pressure for extra-judicial killing by providing a legal means of causing state enemies to "disappear." If this theory holds true, then there would be an inverse relationship between judicial and extra-judicial executions because the two behaviors are *complementary*.

The third and most probable relationship between the two forms of state killing is a positive correlation in which the higher the rate of one form of state killing, the higher the other. Most of the features that explain high rates of capital punishment – low regard for citizen rights, belief in lethal violence as a legitimate expression of state power, fear of disorder – seem also to encourage higher than

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average rates of extra-judicial killing. This notion can be called a theory of *common causation* because the two forms of state killing are shaped by similar forces, though it should be stressed that what tends to generate high rates of non-judicial execution are values and views about the propriety of state killing rather than the executions themselves.

For the most part, the history of Europe supports the *common causation* claim that judicial and extra-judicial executions are linked. The most aggressive executors in 20th century Europe were the same regimes that killed promiscuously without judicial sanction, with Hitler's Germany and Stalin's Soviet Union the most notable cases. What is more, the period after the abolition of capital punishment in Europe has evinced no upward pressure on extra-judicial killing, which contradicts the expectation of the complementarity theory.

The experience in Asia is also broadly consistent with a theory of common causation. South Korea, Taiwan, and China are three jurisdictions in which judicial and extra-judicial executions rose to epidemic levels together before falling concurrently. The mere fact of abolishing capital punishment is not a sufficient condition for ending extra-judicial executions, but when the death penalty ends there appears to be no hydraulic transfer of pressure to increase extra-judicial violence by the state.[21]

Reliance on "Leadership from the Front" for Death Penalty Reform

Whatever separates major Asian nations pulling away from the death penalty from their more immobile neighbors, it is not public opinion about the appropriate punishment for murder. At the point of abolition in Hong Kong, public opinion on the death penalty was at 68 percent support, a percentage close to the levels of public support that now exist in Japan, South Korea, and Taiwan. This two-to-one pattern of support is consistent with public opinion just prior to abolition in Western nations such as Great Britain, Canada, and the Federal Republic of Germany. In all of these democratic settings, the political momentum for reform was achieved through what has been called "leadership from the front." And in both of the "vanguard" nations, critical leadership came from the very top of the political pantheon – elected presidents. In South Korea, land of the longest of these adventures, public support for capital punishment has not generated substantial backlash to a moratorium on executions that was entering its 12th year in 2009. The Korean story also displays a large gap between public support for abolition (34 percent) and support among legal and political elites (60 percent). A similar pattern can be observed in Malaysia, where the public supports a death penalty that 80 percent of lawyers want to eliminate. A less heroic story of presidential initiative in response to interest group pressure and corruption allegations occurred in the Philippines in 2006.[22] More generally, a large gap between public opinion and leadership from the front seems to be a recurrent theme in several Asian settings where disengagement from the death penalty has already occurred or is in progress.

Political leadership from the front is a two-way street in contemporary Asia because government elites in some countries also provide the major impetus to maintain high rates of execution, or even increase them. The difference that fuels the gap in execution rates between Singapore and Malaysia is not between the opinions of the average "man on the street." In Singapore, the PRC, North Korea, and Vietnam, the key determinant of high execution levels is the preference of strong governments with pervasive authority over executive and judicial actions. This kind of "leadership from the front" is of course less remarkable than the kind that pulls away from capital punishment because there is no pattern of democratic control in any of the four authoritarian political structures. In these settings, leadership comes from the front on all

https://doi.org/10.1017/S1557466009008699 Published online by Cambridge University Press

matters and it frequently (though not always) contradicts public opinion. Still, if the PRC is now launching a campaign to curtail executions, in some respects it will resemble the liberal death penalty reforms undertaken in Asian and European democracies. Whatever the governmental system, the most likely proximate cause of substantive change in death penalty policy is the leadership of political elites.

"Human Rights" and "Limits of Government" Influences on Capital Punishment

Emphasis on the need to limit government power and respect the human rights of criminal offenders was not evident in the domestic debates that produced abolition in Western Europe, for there, neither the friends nor the foes of capital punishment made any serious effort to build a position on the death penalty into a larger framework of human rights. The human rights/limits of government perspective took hold in Europe only in the 1980s and 1990s, after Western Europe had already become an execution-free zone. Certainly European views of state execution influenced death penalty discourse in Asia as well. Yet even those Asian nations where the impact of these concerns has been greatest – South Korea and Taiwan especially – have been influenced more by their own domestic histories than by the global abstractions of European human rights rhetoric. Still, to the extent that execution policy is discussed in contemporary Asia, questions about limits on government are highly salient and usually close to the center of debate.

The clearest cases of concern for human rights and limits on government are South Korea and Taiwan. At the other extreme is the limited range of domestic discourse on capital punishment in the PRC and Singapore, though in these two places the failure to employ political frames may mainly result from self-censorship in constrained circumstances.[23]

What the Asian situation seems to reveal is not that the political aspects of capital punishment are more important in present-day Asia than they were in Europe before the 1980s, but rather that the passage of time has produced a substantial increase in human rights concerns about capital punishment around the world. In the 21st century, rights-related issues will be prominent in any serious discussion of capital punishment, for it is time rather than geography that is the critical variable.[24]

While human rights have become highly salient and transnational NGOs now lobby on death penalty policy and collect information on how it is practiced around the world, the main arena for death penalty debates and decisions remains the nation-state. There is no transnational body in Asia seeking to play a role in death penalty policy parallel to that played by the Council of Europe after 1982. Despite this "every nation on its own" orientation, the region is replicating the pattern that characterized Europe during the 36 years between the end of World War II and France's abolition in 1981. For abolitionists in Asia, this time lag, and the heightened regard for human rights it has produced, may be one "advantage of followership."

Asian Diversities

In regional terms, the outstanding difference between Western Europe of the post-war period and the current circumstances of Asia is the much wider variety of political, social, and economic environments in Asia. That is why this section is called "Asian Diversities." In Europe by the 1960s, many of the forces believed necessary for the abolition of capital punishment were either completed or (as in the case of Spain, then in the hands of an aging dictator) all but inevitable. From the standpoint of observing the preconditions for the death penalty's demise, arriving in Western Europe at mid-century was like arriving at a theater for the start of Act Three. After a brief flurry of

https://doi.org/10.1017/S1557466009008699 Published online by Cambridge University Press

executions for wartime offenses, conditions in Western Europe varied little from country to country, and in their practice of capital punishment most nations combined low rates with a fin-de-siècle mood. There was poverty in the immediate wake of World War II, and there were gaps in wealth between north and south in Western Europe, but there was considerably less variation in circumstances—both within and among nations—than is the case in contemporary Asia. Today the range of economic conditions in Asia is as great as the range worldwide, from Japan, Singapore, and Hong Kong on the high end to Nepal, East Timor, and Laos on the low. The political systems of Asia also vary greatly, from the totalitarianism of North Korea and the military authoritarianism of Myanmar to a wide variety of functioning democracies, and these sharp political differences distinguish more than merely a few extreme cases. The PRC and Vietnam are both functioning governments dominated by authoritarian communist parties, while Singapore is administered by an authoritarian democracy with an extreme intolerance for dissent. Changes in forms of government in Asia are frequent over time as well.

All of this variation, over time and among nations, makes Asia an essential laboratory for examining how political, economic, and social forces shape death penalty policy. Rather than listing a wide range of environmental factors and calling them "Asian differences," this section focuses on three main dimensions of Asia's diversity: (1) in execution rates; (2) in the pace of change in death penalty policy; and (3) in the policy content of low-rate retentionist nations. One purpose of describing these Asian diversities is to establish the contexts that inform our discussion of Asian differences in the final section of this article.

High Variation in Death Penalty Policy and Rates of Execution

In recent years Singapore and the PRC have sometimes executed at rates above five per million people, which is thousands of times higher than the execution rate in the "improbable democracy" of India. As striking as this illustration is of the range of variation in Asia, an equally instructive contrast concerns two contiguous nations with a common colonial history and legal heritages that were only separated after a post-colonial attempt at national unity. Consider the execution rates for Singapore (population 4 million in 2000) and Malaysia (population 23 million) for the period 2000 to 2005. These nations share a British colonial past, a common law foundation for their legal systems, and a government structure that is formally democratic but authoritarian in practice and dominated by a single "strongman" who now wields authority informally. Both nations also have a variety of mandatory capital statutes and substantial numbers of death sentences, and the proportion of Muslims in Malaysia (53 percent) is three and one-half times higher than in Singapore (15 percent). Nonetheless, over this six-year period the annual rate of executions in Singapore (5.0 per million population) is 62 times higher than that in Malaysia (0.08), and the gap has grown wider over time. A difference of this magnitude cannot be attributed to differences in culture or in government or political structure; it seems to reflect a taste for execution in Singapore's government that is no longer found among Malaysian political elites. In 2006, Malaysia's Minister of Justice even said he supports the abolition of capital punishment because (as he put it) "no one has the right to take someone else's life, even if that person is a murderer."[25] Preferences as strikingly different as these appear in few policy areas outside capital punishment.

It is difficult to tell how long the Malaysia-Singapore contrast in executions will endure. As of this writing, Lee Kuan Yew, the British-educated lawyer and creator of modern

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Singapore who led the nation for 31 years before stepping down as Prime Minister in 1990 to become "minister mentor," continues to respond to critics who condemn the city-state for being too tightly controlled by stressing Singapore's "vulnerability" in a world and a region full of perils. But Lee also emphasizes that his is a country of "pragmatists" who will "have to go in whatever direction world conditions dictate if we are to survive and be part of the modern world."[26] Many observers believe there is a trend towards universal abolition of capital punishment. If that prognosis is correct, and if Lee is right about Singapore's need to adjust to changes in its environment, then when the execution contrast between Singapore and Malaysia does diminish or disappear, it will be because Singapore converges toward Malaysia – and toward most of the rest of the region and the world.[27] That convergence may already have started. In the three most recent years for which evidence is available (2006-2008), Singapore's average annual execution total (4.3) dropped by more than 75 percent compared with the average annual total for 2000-2005 (18.7).

Who Gets Executed in High-Execution Nations?

In describing Asian diversities, one important question concerns the types of offenses and offenders who get executed in high-execution jurisdictions and periods. Though the data are patchy, Asia has had several high execution eras: China and Singapore throughout the past generation, Taiwan until 2000 or so, Vietnam, North Korea, and South Korea in the 1950s and 1960s, and probably Vietnam and North Korea more recently.[28] What kinds of offenders and offenses receive the death penalty when its reach expands? Although many crimes are death-eligible in Asia, and the particular subjects of capital punishment vary from nation to nation, only a few common crimes – murder and drug offenses especially – account for the large majority of executions in the region. For the most part, the persons most likely to get executed in contemporary Asia's high-execution environments are the poor and poorly connected.

The first common characteristic in high-volume environments is the large number of different crimes for which death is a possible punishment. China has had 68 such offenses since its criminal code was reformed in 1997, Taiwan retains 50 capital crimes even after its capital laws were narrowed, Vietnam had 44 capital offenses until the number was cut back to 29 in 2000, and the death penalty in Singapore continues to be prescribed for a wide range of offenses."

The particular subjects of capital punishment vary from country to country. South Korea aggressively enforced national security offenses well into the 1980s, as did Taiwan before democratization began in the same decade. Political offenses are often capital too, though the reform of China's Criminal Code in 1997 did shift the government's focal concern away from the kinds of political crimes that frequently led to execution in the past. Forcible rape and other sexual offenses carry the possibility of capital punishment in several Asian jurisdictions – most notably in the Philippines between its two abolitions (1993-2006).[29] In the PRC and Vietnam, death remains a sanction for public corruption and aggravated crimes of theft, but in both locations there have been attempts to restrict capital punishment for white-collar and property offenses.

Drug offending is a capital crime in many high and low execution nations, especially in Southeast Asia. As of 2007, at least 34 of the world's 64 retentionist countries that had conducted executions in the preceding decade had legislation authorizing the death penalty for drug-related crimes (the comparable count in 1985 was 22). Almost half of those 34 nations are located in Asia. Despite the

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international trend toward abolition during the last two decades, the number of countries expanding capital punishment to include drug offenses has increased, especially in Asia. Concern about drug trafficking is also prominently featured in pro-death penalty rhetoric throughout the region, with many Asian governments insisting –dubiously, we believe—that capital punishment deters drug crime.[30]

The list of potentially capital crimes is a misleading guide to actual patterns of execution in most Asian nations because a handful of offenses at the top of the priority list usually accounts for the majority of executions. Murder without mitigation and major drug crimes are the two offenses most commonly considered serious. Police and prosecutorial discretion sometimes reduces the punishment for such offenses to something less than death, but the mandatory death label indicates that these are crimes where execution outcomes are expected and normal. By offense, murder and banditry have been especially high-volume execution crimes in the PRC and Taiwan, while the available evidence suggests that in Indonesia, Malaysia, Singapore, Thailand, and Vietnam, the majority of capital cases are for drug crimes. In the Philippines, by contrast, three of the seven persons executed between February 1999 and January 2000 had been convicted of capital rape without homicide.

As for offender characteristics, in most recent high-execution environments the so-called "criminal class" accounts for the vast majority of executions, and it most frequently consists of the poor and ethnic minorities. Executed offenders do not all come from the bottom rungs of the social ladder, but there is substantial overrepresentation of the least well off. In Pakistan, for example, there is some economic diversity among the 7000 persons on death row, but the Islamic practice of "diyat" by which the condemned can pay money to the victim's family in exchange for clemency means that the large majority of executions are of persons from poor families. In the Muslim-majority nation of Malaysia, an estimated 90 percent of death row inmates are poor. In Japan, where about 90 percent of the population self-identifies as "middle class," most of the more than 100 inmates on death row have no choice but to be represented by a court-appointed attorney. And in China, one study examined 1010 serious criminal cases and found that 81 percent of the 544 persons who received unsuspended death sentences were convicted of having killed at least one victim, while 62 percent of all capital offenders were either unemployed or rural residents, and 42 percent were "transients." In the same study, 70 percent of all capital offenders who were employed held low status jobs.[31] In many Asian nations, including Singapore, Malaysia, and Indonesia, foreigners are more prominent in death penalty totals than in the broader population of criminal defendants. As for white-collar offenders, the corrupt government officials who occasionally get executed in China (as happened to former Food & Drug Administration Director Zheng Xiaoyu in July 2007) sometimes receive tremendous publicity but represent a fraction of one percent of the death toll from "Strike Hard" (*yanda*) campaigns. At peak rates of execution in the PRC, one percent of the annual total of executions would be 150 persons, and our sources indicate that 150 government officials have not been executed in any decade in China since the 1980s.

The good news about the concentration of executions among the "criminal classes" and poor and minority populations is the apparent scarcity of political offenders and social dissidents who get executed. If such cases are not a prominent feature of the current landscape of Asian executions (except perhaps in North Korea), then this marks a major departure from death penalty practice in the PRC and Taiwan in the first few decades after mid-century, in South Korea under Presidents

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Syngman Rhee and Park Chung Hee, and in Vietnam under Ho Chi Minh. But the problem with declarations that dissidents are seldom executed is that political executions are likely to be among the most secretive government actions, so they may be underrepresented in the tightly controlled death penalty statistics that characterize some Asian regimes. In Taiwan, for example, an entire class of executions was excluded from official records until 1977, and what separates that system's method of accounting from those used in several other Asian governments is Taiwan's subsequent candor in acknowledging the omission. Similarly, the problem with celebrating the seemingly small number of judicial executions of political dissidents in contemporary China is that these are precisely the kinds of offenders the government would most like to keep off its own death penalty rolls and those of the NGOs that monitor the country. It is impossible to tell to what extent such an execution pattern can be kept secret, but even if there remain places in the PRC where overtly political executions can occur without notice to the outside world, the capacity to hide them is shrinking every day. In South Korea and Taiwan, we can be confident that executions of political opponents have not occurred on any significant scale since their democratic turns, while in the more secretive environments of Singapore and Vietnam the evidence suggests that large numbers of political dissidents and enemies are not executed.

In sum, the wide diversity in Asian rates of execution is not reflected in a diversity of types of offenders subject to execution. The bulk of executed persons are common offenders convicted of homicide, robbery, or drug crimes. This is a shift away from the explicitly political executions that were commonplace in previous generations in South Korea, Taiwan, Vietnam, Cambodia, and China. Moreover, the huge variation in execution rates for homicide, drug, and robbery offenders across the jurisdictions of Asia does *not* reflect differences in crime rates between high and low execution nations – with one exception. Crime problems do not distinguish high-execution Singapore from low-execution Malaysia and Thailand, and the same can be said of Vietnam and Indonesia. Similarly, China does not seem to have significantly higher crime rates than Taiwan or South Korea. It is only in Japan that a low crime rate may be an important contributing cause of a low rate of execution, and even there the surge in death sentences that has occurred in recent years—and the acceleration in executions that started in 2006—have been accompanied by a homicide rate that has remained flat since 1990.

Variation in the Pace of Change in Execution Rates

The prevailing pattern in Western European nations that dropped the death penalty without changing the form of government was for long declines that produced substantial periods with few executions to precede the onset of non-execution. The paths to abolition in other regions of the world have been more varied, but it is reasonable to anticipate that those nations with the lowest rates of execution in the 1980s and 1990s will be prime candidates for intentional stoppages in execution in the 2000s. In Europe, the main exceptions to this pattern were the abolitions that occurred in Italy and Germany in the mid-1940s after their repressive regimes had been decisively rejected, and the abolitions that took place in the Soviet client states of Eastern Europe after their regimes were overthrown following the fall the Berlin wall.

But of the three governments that moved dramatically toward ending executions in the recent history of East Asia – the Philippines, South Korea, and Taiwan – only the Philippines was at the low end of the execution scale long prior to the move, while nations such as Japan, Thailand, Indonesia, and India all had much

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lower execution rates than South Korea and Taiwan did before they began to dismantle capital punishment. Indeed, the execution rate in Taiwan was many times higher than in Japan or Thailand, and South Korea's execution rate was also substantially higher.

The main reason South Korea and Taiwan moved decisively to limit executions was political change in a democratic direction. Thus, explaining the rapid pace of change in these two nations is not difficult: the most important moving parts are shifts in power, political sentiment, and leadership. In some circumstances the absence of political change also helps explain stasis in execution policy. The persistence of executions in Japan is at least partly a byproduct of a half-century of (almost) continuous conservative control of government. Later in this article we present the persistence of hard-line authoritarian regimes as an important "Asian difference" in execution policy, but here we merely observe that the great advances toward ending executions in South Korea and Taiwan during the last decade coincided with the decline of repressive regimes in the preceding years.

Variation in the Policy Content of Low-Rate Retentionist Nations

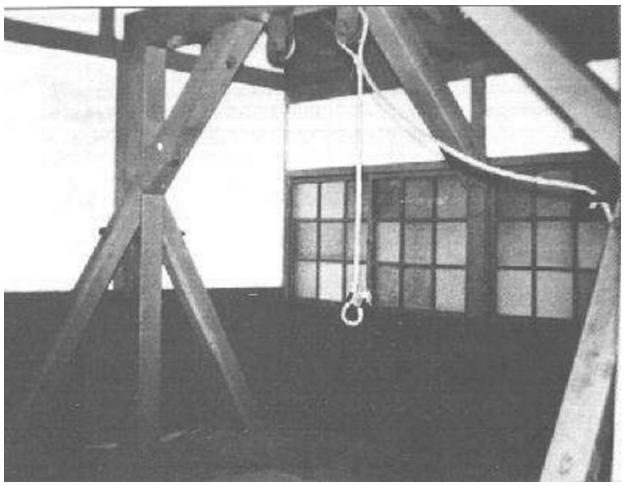
While the rate of executions is one important dimension of death penalty policy in those Asian nations that retain and use the death penalty, there are significant differences between nations with similar execution records. In some low-execution settings, the central government seems to direct little attention or control at capital punishment. India may be the best example of this decentralized orientation, though even there the "rarest of the rare" doctrine that restricts the scope of cases qualifying as capital emerged from the Supreme Court in Delhi. In other low-execution settings, long periods pass without any executions even though no formal reshaping of policy seems to occur. In both Indonesia and Thailand, substantial periods without execution have been punctuated by occasional executions despite no alteration in substantive policy. In Japan, by contrast, a low rate of execution is consciously maintained and carefully administered by a central government that regards regular executions as a necessity. Since Japan's 40-month moratorium on executions ended in 1993, no calendar year has passed without at least one hanging, and sometimes (as in 2001 and 2006) this may have been a motive for carrying out executions in late December. Some executing nations – China, Thailand, and (before its second abolition) the Philippines – have tried to soften their image by using lethal injection, but in Japan there is little momentum toward this reform or toward a softening of the secretive and arbitrary execution policy that has long characterized that country.

All of this suggests that the importance of a handful of hangings in Japan is out of all proportion to the value of that enterprise for criminal justice or crime control. One way of distinguishing Japan's policy from India's is to call the latter's system a low salience death penalty system and Japan's a high salience system of significant importance to the ruling party and the national government. A complementary way to describe the difference between Indian or Indonesian policy and that of Japan is to distinguish the hit-and-miss pattern of *inertial retention* by which the former governments respond without enthusiasm to their long-standing death penalty systems, and the pattern of *intentional retention* in Japan where the government spends significant time and attention on capital punishment and regards it as a positive part of its criminal justice system without (until 2006) pushing for more executions.

Japan's intentional, high-salience model of execution policy generates its own puzzles. Most importantly, if the value of executions is so substantial, why conduct so few? There are

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two answers that help explain this Japanese pattern. First, only a few executions are needed to serve the symbolic purpose of validating the government's authority. Why execute 30 inmates a year if fewer serve the purpose just as well?[32] In this sense, there seems to be a real difference between what the death penalty says and what it does to accomplish utilitarian purposes such as deterrence, the marginal benefits of which are easy to imagine but difficult to demonstrate. The second reason Japan executes rarely despite the high symbolic value it places on continuing to put criminals to death is the nation's substantial ambivalence about the propriety of state killing, both in governmental circles and among the general public. Reservations about the propriety of execution almost certainly play a role in this low-rate but committed execution regime, for the perception that a larger number of executions will be politically costly or risky seems to be the only discernable motive for maintaining execution totals in the single digits from 1977 to 2007.[33] The Japanese pattern of low volume with high salience reflects a conflict in which both the interests served by executions and the costs of execution are deemed to be substantial. Although this conflict is not reflected in the blunt instrument of public opinion polls or in political debates in the Diet, it is evident in the sharply different policies that various ministers of justice have adopted. In India and Indonesia, by contrast, the issue of the death penalty simply appears to be less important, perhaps because the governments of these still developing nations believe they have more pressing concerns.



The gallows in Osaka, Japan.

It is unclear which type of low execution environment, intentional or inertial, is the better harbinger of policy shifts toward abolition among the diverse range of retentionist nations in the Asian region. In low-salience inertial contexts such as India, Indonesia, and perhaps Mongolia, abolition might require less political energy, but at the same time there may also be less interest in mobilizing opposition to capital punishment. Though the death penalty appears to be a more important question in rich Japan than in those developing nations, this difference cannot be translated into a confident prediction of which country will abolish first.

Three Asian Differences

This section identifies three features of contemporary Asia that distinguish capital punishment policies there from the policies in Europe and other parts of the world. The most important Asian differences are: (1) the persistence of national control over death penalty policy; (2) the prevalence of long-term single-party rule; and (3) the durability of hard-line authoritarian regimes, especially in three of the world's last remaining communist nations—China, Vietnam, and North Korea—all of which maintain high rates of execution.

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The Persistence of National Autonomy and the Weakness of International Involvement

In Europe, transnational organizations assumed leadership on death penalty issues in 1983 when the Council of Europe promoted Protocol No. 6 of the European Convention on Human Rights. Since then, transnational standards have become important substantive principles in negotiations with the new national governments of Eastern and Central Europe and with the governments of Russia, Turkey, and the Ukraine, ultimately leading to the fastest and most complete regional abolition in history.

The situation in Asia is different in several critical respects. First, there are no international Asian organizations with substantial pan-Asian authority or influence in the first decade of the 21st century, for many reasons. The big political differences on the continent make common standards harder to find, and on most questions there is little enthusiasm for regional authority that might constrain national autonomy. When heads of state from the Association of Southeast Asian Nations (ASEAN) signed a new charter in November 2007, the result was a lowest common denominator content in which the denominator was very low indeed. Under the new charter, the principle of "noninterference" in the affairs of member states continues to take precedence over adherence to democracy, the rule of law, and constitutional governance, leaving ASEAN largely impotent to respond to the acts of repressive regimes such as Myanmar's ruling junta. This failure to call members to account undermines ASEAN's legitimacy and raises the question of the organization's relevance. More generally, since there is no "Asian community" or "East Asian community" of nations to parallel the expanding European Community, the absence of powerful international organizations and top-down moral and political regulation follows as a matter of course.

The weakness of international involvement is one piece of a larger pattern of national autonomy on death penalty issues in Asia, for there are few efforts by individual nations in the region to influence death penalty policy in other countries. With so much diversity in Asia's political systems, and with almost all of the region's large nations still retentionist, the absence of an orthodox set of values on capital punishment is unsurprising, as is the absence of missionary zeal to export whatever abolitionist enthusiasm exists.[34] What is harder to understand is the near absence of discourse on death penalty matters among Asian nations and within ASEAN, and the weakness of efforts by Asia's more developed countries to try to influence death penalty policy in neighboring jurisdictions. Even in Australia, which last executed in 1967 and which abolished capital punishment in 1985, opposition to the death penalty is the formal policy of both the Labor and the Liberal parties, but under Prime Minister John Howard, who led the country for almost 12 years between 1996 and 2007, the government's covert position was to endorse the death penalty in certain cases, as it did for the six Bali bombers who were sentenced to death in Indonesia for killing 88 Australians (and 114 other persons) in October 2002. Australia also says little against the death penalty in international forums, directs almost no criticism at capital punishment in China or the U.S. (two of its largest trading partners), and has long been quietly content to let Indonesia execute Indonesians. Only when the life at stake was Australian did the government down under protest with any vigor against capital punishment.

Japan, the most developed nation in Asia, has not attempted to influence death penalty policy in other Asian countries, for at least two reasons. First, Japan has had little desire to be a pan-Asian political leader[35] and also has lacked the reservoir of good will to bring this type of leadership off, for many neighboring nations are only a half century removed from

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Japanese colonialism. The second obstacle to Japan taking a leadership position in Asia is that its government does not have a deeply felt and confident position on capital punishment. In this sphere as in other political realms, ambivalence is hardly a selling point. Nations that recently abolished the death penalty are poor candidates for pan-Asian leadership, too, because they lack the economic clout and cultural influence to command respectful attention. Whatever their virtues may be, Cambodia, Nepal, Bhutan, and the Philippines are seldom considered models for economic or political development.

The weakness of challenges to national autonomy on capital punishment does not mean that issues pursued by international bodies are unimportant in Asian death penalty debates. Rather, international opinion becomes important in places like South Korea and Taiwan when it is injected into domestic discourse by domestic political actors. Human rights are important in Taiwan because Taiwanese politicians and civil society have tried to make them so, and similar agents have been at work in South Korea. But one consequence of this practice of domestic adoption and adaptation of human rights frames is that achievements that occur in one Asian nation are not contagious in any direct sense. Human rights NGOs operating in Asia have had only modest success across borders.

Might this change soon? Some Asian nations would regard better coordinated regional human rights campaigns as unwelcome violations of national sovereignty, with Japan, China, and Singapore being the three most prominent examples. But there are some governments presiding over what we called the "inertial retention" of low salience death penalties – such as India and Indonesia—that might listen to credible leadership efforts from a high status Asian nation. The most likely source of this style of leadership is South Korea, especially if it crosses the boundary from *de facto* to *de jure* abolition. South Korea is small for a regional power, but its cultural influence is substantial in many Asian nations, and it does have incentives to assert its influence in competitive contrast to Japan. A significant step in this direction may have been taken in 2009 when South Korea's government pledged to the Council of Europe that it would not carry out executions.[36] This promise is striking not only because few Asian nations have made similar commitments but also because the pledge was made by the conservative government of President Lee Myung-bak at a time when public opinion in the country supported capital punishment by more than 3 to 1 and there were public and media calls to hang serial killers who have been condemned to die in recent years—at least one of whom has volunteered to be executed.[37]

For the foreseeable future, the lack of challenges to national autonomy on death penalty questions will probably remain an important fact of life in Asia, though even modest efforts by developed nations such as South Korea to start discussions with other countries in the region could make a meaningful difference. In recent years, the main attempts at regional influence have involved complaints about nationals from one Asian nation under sentence of death in another. One typical circumstance is a death sentence in Singapore, Vietnam, or Indonesia for an Australian national, often in a drug case. National governments in abolitionist jurisdictions are understandably concerned when their citizens are sentenced to death elsewhere. It is inconsistent and even hypocritical, however, when only these circumstances provoke protests by non-death penalty governments. When concern is limited to the welfare of citizens from the complaining nations, the objection cannot be credibly framed in terms of broad principles of human rights or of limited government power. More practically, "that sort of unprincipled policy differentiation sure won't fly" in most Asian

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nations.[38]

The Persistence of Single-Party Dominance

In most developed political systems of the West, frequent shifts in power are accepted and expected. Transfers of power are not only the norm in Western Europe and the former nations of the Commonwealth, they are considered a hallmark of democratic government. Where non-democratic governments have persisted, as in Spain and Portugal until the 1970s and in the Soviet-dominated satellite states during the decades of the Cold War, the regimes endured because they were unwilling to share or relinquish power and because they possessed the means to realize their will.

Governments in Asia tend to maintain power for long periods of time, and a substantial number of them have been non-democratic. China, North Korea, and Vietnam are communist, authoritarian, single-party states, while Taiwan and South Korea (until the 1980s) and Singapore (to the present) have had authoritarian regimes of the right. Other nations such as the Philippines, Indonesia, Pakistan, and Malaysia are more difficult to classify on a left-right continuum but must be considered undemocratic for most of their modern histories. Even Japan, with a fully functioning democratic system, has experienced more than fifty years of almost uninterrupted one-party rule—a hegemony that ended with the landslide victory of the Democratic Party of Japan in the national election of August 2009.

Regimes in power for long periods of time tend to retard the capacity for developing political liberties and establishing limits on state power – and this is especially the case for long-lasting authoritarian regimes. In this respect, there are no clear differences between governments of the hard left and the hard right (for some regimes, such as the PRC since Deng Xiaoping, it is difficult to classify the government's policies on a left-right continuum). But simply adding the populations of the countries listed in the previous paragraph produces a present total of more than two billion people living in one-party governments or in nations that only recently pushed toward plural democracy.

The pace of economic change has been rapid in much of Asia, and shifts from agriculture to manufacturing and countryside to city have produced powerful demographic shifts as well. Where high rates of economic development have been sustained for decades, as in Japan, Taiwan, South Korea, Singapore, and China, changes in levels of education, training, and social mobility are frequent too. The contrast between fast moving economic and social shifts and slow moving governmental and political processes produces lags between socio-economic developments and legal and political accommodations. A persistent gap between economic change and political reform creates pressure for political change. If that pressure builds up and is not suppressed, long periods of economic development without significant political change will be followed by structural change in government. This has already happened in South Korea and Taiwan but not (yet) in China, Vietnam, or Singapore.

Again, one consequence of the difference in pace between economic and political change is a time lag between economic and social changes and the political adjustments they promote. But even if causation is direct it may not be swift. Long delays between economic development and political liberalization are not decisive evidence against economic causation, but does economic development mean the inevitable end of authoritarian government? The jury is still out on this question in East Asia – but not very far out. Authoritarian governments of the right have been reformed in Korea, Taiwan, Indonesia, and the Philippines, and they have been significantly softened in Malaysia and (between coups anyway) Thailand. On the continent, only

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Singapore, Myanmar, and Pakistan remain substantially intact as authoritarian, right-wing regimes. The prospects for right-wing governments to generate sustained economic growth and enhanced educational and social opportunity do not look promising.

Left-wing authoritarianism in Asia has had more staying power. China, Vietnam, and North Korea remain politically unreconstructed despite substantial economic development and the dismantling of some socialist institutions in the first two. This cluster of communist states – and their strong commitments to capital punishment – is the third major difference between Asia and other regions of the world.

Communism and Capital Punishment

The implosion of the Soviet Union as a regime and superpower helped produce a striking contrast between Europe and Asia in the presence of hard-line communist governments. Communism has almost disappeared in Europe and Central Asia, replaced by various gradations of democracy and by other types of authoritarian government. Nearly all of the USSR's satellite states had formal death penalties on their statute books before the fall of the Berlin wall (though East Germany abolished in 1987), and most of those states abolished capital punishment under European pressure early in their post-Soviet careers. There were multiple routes to abolition in this region, with 11 cases of abolition through legislative action and 5 involving the prominent role of a constitutional court, but in many respects – especially the influence of the Council of Europe and Amnesty International – similarities prevailed.[39]

There are few hard-line (authoritarian) communist states on the world map in 2008, but almost all of them are in Asia. Cuba has a communist government with some aspects of authoritarianism, but it is a softer regime than classic Stalinist governments were, and none of Latin America's other new left governments seem close to communist. In contrast, three Asian nations fit the hard-line communist classification: China, Vietnam, and North Korea.[40] All are longstanding and self-perpetuating governments that have been in power for at least half a century (Vietnam united in 1975 but the communists came to power in the north in 1954), and all make regular use of execution as a criminal sanction. While North Korea is dysfunctional in many ways (and may be on the way to collapsing), the PRC and Vietnam are developing rapidly and show few signs of governmental weakness or instability.

Hard-line communist states, like all authoritarian governments, are unfriendly to notions of limiting government power or extending personal liberty. This enthusiasm for state power is reflected in periods of high-rate state killing in both China and Vietnam. The affinity of communist governments for capital punishment is more a matter of practice than principle. Communist theory (which hopes for the withering away of the state) typically endorses the ultimate abolition of execution, and a rhetoric of eventual abolition is present in the PRC and Vietnam now as it was in the Soviet Union under Lenin and Stalin. In practice, however, hard-line communist governments tend to use capital punishment aggressively, in many instances more aggressively than other authoritarian systems.[41]

But while all types of hard-line government tend to endorse capital punishment and resist limits on its application, the prospects for deeper change in Asian death penalty policy are closely tied to the behavior of communists in power because hard-line regimes of the right were reformed or significantly softened in the late 20th century. South Korea and Taiwan are the most notable examples, but significant steps toward democracy also have been taken in Thailand, Indonesia, Malaysia, and the Philippines. A similar softening of the communist regime in Laos may have occurred,

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but the more dramatic shifts in Cambodia since Khmer Rouge required external pressures to effect regime change.[42]

One critical question is what the impact will be of sustained economic growth for multiple decades in the pattern of Taiwan and South Korea on the authoritarian proclivities of a hard-line nation like China. We are in the process of finding out. China and Vietnam are both experiencing rapid economic development, and both are still relatively early in the process, though they may cross important developmental boundaries soon. The PRC already helps administer the wealthy autonomous regions of Hong Kong and Macao – without relying on capital punishment – and the Communist Party hopes and expects that the country's "middle class" will expand to more than half of its total population by 2020, which would be an exponential increase from the 4 percent to 5 percent of the total population that could be called "middle class" in 2006. It is possible that the same kinds of economic and social forces that broke down regimes of the authoritarian right will have similar effects in China and Vietnam. In any event, executions in China have already declined markedly, from around 15,000 per year for the period 1998 to 2001 to 5000 or so in 2008.

Whatever the outcomes of the interactions between developmental pressures and communist governments, this aspect of Asia's present and future has no direct precedent in recent European history. If communist regimes such as China and Vietnam are as prone to democratic change through the steady pressure of development as the autocracies of the right were, this lesson must be learned in the years to come. Communist governments may compromise on capital punishment without more general democratization – and the PRC may already have initiated such a two-track approach – but such compromise seems likely to occur only if international concern about the death penalty in Asia intensifies, as it seemed to do in the period leading up to the 2008 Olympics in Beijing. Unless the major communist nations of Asia implode in the Soviet pattern, the future will test how hard-line communist states respond to the same dynamics that have already reshaped many other authoritarian governments in the region. This is a topic of defining importance to the future of the death penalty in the region.

Conclusion

A comprehensive account of how the recent history of capital punishment in Asia compares to the records in other regions would require two kinds of data unavailable to us. The first is a more complete picture of Asia than we could assemble in the five years that we worked on this project. The biggest missing pieces are the nations of South Asia, especially India, Pakistan, Bangladesh, and Sri Lanka. Indonesia also deserves the same kind of case study attention that the nations of East Asia have received. We hope our efforts will provoke others to uncover more country-level detail about capital punishment in these and other neglected nations. We also hope that vital information now shrouded in government secrecy in China, Vietnam, North Korea, and Singapore will be revealed in the near future. There is still much to be learned about the history and current practice of capital punishment in Asia that could enrich and modify the themes of this article. If some of our interpretations are proved wrong or nearsighted, we will still consider this project a success so long as it helps stimulate additional studies of the subject. They are sorely needed.

But Asia is hardly the only place where there are large gaps in our understanding of the death penalty over time. There are few studies of capital punishment in Western Europe that examine more than the most recent decades, and little is known about the politics and administration of capital punishment in Central and Eastern Europe, the Baltic states, and

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Scandinavia. Studies are also scant about the history of capital punishment and its abolition in Latin America, a region where the death penalty disappeared before economic development and political democratization were very far along. A richer understanding of the histories in a wider variety of nations could reveal a great deal about how closely abolition is tied to political change and economic growth. It is difficult to arrive at confident conclusions about the distinctiveness of Asia in part because of the ignorance about capital punishment in so many other places. The more we learn about other regions, the clearer our vision will be of the aspects that make Asia similar and distinctive.

But at this point in the comparative study of capital punishment, what sets Asia apart from Western Europe of the 1950s is first and foremost the much greater variety of political and economic circumstances. Only one Asian nation (Japan) maintains a death penalty in circumstances where European experience might predict abolition, and that seeming anomaly may be partly a function of the LDP's right-of-center hegemony for the past half-century. With the victory of the Democratic Party of Japan in the national election of August 2009, time will help tell whether the transfer of power in a leftward direction will transform Japan's death penalty policy. That did not happen during the brief time that a non-LDP coalition governed in 1993-94, but some analysts expect that this time will be different.[43] In all of the other large and most developed Asian societies, the direction of political change and of death penalty policy seems consistent with Western patterns, albeit more slowly and less closely linked to transnational organizations and influences. In the years to come, the great variety of Asian political circumstances and the presence of rapidly developing but still authoritarian governments will provide clearer clues about the circumstances in which development pushes toward plural democracy, human rights, limits on government, and abolition of capital punishment. To paraphrase a proverb, the citizens of Asia are living in interesting times.

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This article was written for Asia Pacific Journal *and relies on materials from that book.*

Recommended citation: David T. Johnson and Franklin E. Zimring, "Death Penalty Lessons from Asia," The Asia-Pacific Journal, Vol. 39-1-09, September 28, 2009.

Notes

[1] Studies of the death penalty in comparative and global perspective include Carsten Anckar, *Determinants of the Death Penalty: A Comparative Study of the World* (Routledge, 2004); Sangmin Bae, *When the State No Longer Kills: International Human Rights Norms and Abolition of Capital Punishment* (SUNY, 2007); David F. Greenberg and Valerie West, "Siting the Death Penalty Internationally, Law & Social Inquiry, Vol.33, Issue 2 (2008), pp.295-343; Roger Hood and Carolyn Hoyle, *The Death Penalty: A Worldwide Perspective* (Oxford, 2008, 4th edition); and Austin Sarat and Christian Boulanger, editors, *The Cultural Lives of Capital Punishment: Comparative Perspectives* (Stanford, 2005). On the death penalty in Asia, see the Special Issue of *Punishment & Society*, vol.10, no.2 (April 2008), pp.99-218.

[2] David T. Johnson and Franklin E. Zimring, *The*

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Next Frontier: National Development, Political Change, and the Death Penalty in Asia (New York: Oxford University Press, 2009).

[3] Table 1 shows that in 2007 Japan's execution rate per million population was one-half that for the United States. But Stalinist nightmares aside, persons are not selected randomly for execution, they are condemned and executed from a larger pool of potentially capital cases. In Japan and America, this pool consists entirely of homicide crimes. Because Japan's homicide rate is much lower than that for the United States (in 2000 it was only one-tenth as high), its execution rate per homicide is often higher than the rate in the United States. See David T. Johnson, "Japan's Secretive Death Penalty Policy: Contours, Origins, Justifications, and Meanings," *Asian-Pacific Law & Policy Journal*, Vol.7, Issue 2 (Summer 2006), pp.103-106; available here.

[4] Andrew J. Nathan and Bruce Gilley, *China's New Rulers: The Secret Files* (New York Review Books, 2003), p.218.

[5] Associated Press, "Rights Group: China Is World's Top Executioner," July 29, 2009.

[6] Pakistan has the largest death row population in the world, with some 7400 persons condemned to death as of 2007, but its execution rate has varied markedly in recent years. Its average annual execution rate per million population from 1996 to 2000 (0.07) was less than one-tenth the rates in China and Singapore over the same five-year period. But executions in Pakistan began increasing after that, going from 18 in 2003 to 21 in 2004, 52 in 2005, 83 in 2006, and 135 in 2007, before falling to 36 in 2008. See *The News*, "Debate Continues to Rage Over Effectiveness of Death Sentence," March 30, 2009; Tahir Wasti, *The Application of Islamic Criminal Law in Pakistan: Sharia in Practice* (Leiden: Brill, 2009); and Johnson and Zimring, *The Next Frontier*, pp.20, 312.

[7] On the causes and consequences of penal populism in Japan, see the Special Issue of *Japanese Journal of Sociological Criminology*, No.33 (2008).

[8] See, for example, Roger Hood, "Capital Punishment: A Global Perspective," *Punishment & Society*, Vol.3, No.3 (2001), p.341; and Nadeem Farhat Gilani, "Should Pakistan Abolish or Retain Capital Punishment?" *Policy Perspectives*, July-December 2009, pp.133-148.

[9] James L. Payne, *A History of Force: Exploring the Worldwide Movement against Habits of Coercion, Bloodshed, and Mayhem* (Sandpoint, ID: Lytton, 2004), p.130.

[10] For an account of the persistence of American capital punishment that is rooted in the history of race relations, see Franklin E. Zimring, *The Contradictions of American Capital Punishment* (New York: Oxford University Press, 2003). For other statistics about the death penalty in America, see www.deathpenaltyinfo.org.

[11] To qualify as "actually innocent" in this count, defendants must have been convicted, sentenced to death, and subsequently *either* (a) their conviction was overturned and (i) they were acquitted at re-trial or (ii) all charges were dropped, *or* (b) they were given an absolute pardon by the governor based on new evidence of innocence. Link. In Japan, four death row inmates were acquitted at retrial and released during the 1980s, but in the two decades since then there have been no more exonerations of the condemned. See Daniel H. Foote, "From Japan's Death Row to Freedom," *Pacific Rim Law & Policy Journal*, Vol.1, No.1 (Winter 1992), pp.11-103; and Daniel H. Foote, "'The Door That Never Opens'? Capital Punishment and Post-Conviction Review of Death Sentences in the United States and Japan," *Brooklyn Journal of International Law*, Vol.XIX, No.2 (1993), pp.367-521.

[12] For more details about execution declines in Asia, see Johnson and Zimring, *The Next Frontier*.

[13] Of the 32 persons who were executed in Japan in the 37 months between January 2006 and January 2009, 17 were more than 60 years old. In September 2009, Amnesty International published a study reporting that some prisoners are being driven to insanity by the

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harsh conditions and prolonged incarceration on death row. See "Hanging by a Thread: Mental Health and the Death Penalty in Japan," available here. Death row inmates in Japan usually wait years between the finalization of a death sentence and their own execution, but as death sentences increased in recent years, the delays have become shorter.

[14] For a brief summary of capital punishment in Indonesia, see Johnson and Zimring, *The Next Frontier*, pp.323-324, and for a book-length discussion of the same subject, see Todung Mulya Lubis and Alexander Lay, *Kontroversi Hukuman Mati: Perbedaan Pendapat Hakim Konstitusi* (Jakarta: Kompas Penerbit Buku, 2009).

[15] See Johnson and Zimring, *The Next Frontier*, p.33.

[16] While Singapore has long been one of the most aggressive executing nations in Asia and the world, executions there have fallen markedly in recent years, from 138 in the three-year period 1995-1997 to an estimated total of 15 in 2005-2007—a 90 percent drop in 10 years. See Johnson and Zimring, *The Next Frontier*, p.410.

[17] For case studies of capital punishment in South Korea and Taiwan, see Johnson and Zimring, *The Next Frontier*, pp.147-190 and 191-223, respectively. One key to political and social liberalization seems to be economic growth, not merely a high standard of living. Even wealthy nations put their progressive values at risk when income levels stagnate. In this light, the recent resurgence of capital punishment in Japan may partly reflect the economic stagnation the nation has experienced since its economy tanked in the early 1990s. See Benjamin M. Friedman, *The Moral Consequences of Economic Growth* (New York: Vintage Books, 2005).

[18] Franklin Zimring, *The Contradictions of American Capital Punishment* (New York: Oxford University Press, 2003), pp.35-37.

19 See Johnson and Zimring, *The Next Frontier*, p.302.

[20] Our stress on the political causes of capital punishment policy does not mean culture is irrelevant. Methodologically, the arbitrary separation of ideas from institutions frequently forces researchers to face insoluble questions. And substantively, some cultures are more effective than others at promoting prosperity, democracy, and social justice; see Lawrence E. Harrison, *The Central Liberal Truth* (New York: Oxford University Press, 2006). But while the British movement to abolish slavery had important cultural and religious roots, the cultural antecedents are less clear for the abolition of capital punishment. As the penultimate "Asian consistency" of this section explains, politics – and "leadership from the front" especially – is usually critical in death penalty policymaking.

[21] For a more extensive discussion of the relations between judicial and extrajudicial killing, see Johnson and Zimring, *The Next Frontier*, pp.443-451.

[22] For a case study of capital punishment in the Philippines, see Johnson and Zimring, *The Next Frontier*, pp.103-145.

[23] In China, however, the quantity and quality of death penalty discussions have increased in recent years.

[24] The concept of "human right" implies three interlocking qualities that seem to entail universality: "rights must be natural (inherent in human beings); equal (the same for everyone); and universal (applicable everywhere)." Lynn Hunt, *Inventing Human Rights: A History* (New York: Norton, 2007), p. 20.

[25] Quoted in Malaysians against the Death Penalty & Torture blog, March 21, 2006.

[26] "Excerpts from an Interview with Lee Kuan Yew." *International Herald Tribune*, August 29, 2007.

[27] For more on the Singapore-Malaysia contrast, see Johnson and Zimring, *The Next Frontier*, pp.305-307 and 408-413.

[28] On the death penalty in Vietnam and North Korea, see Johnson and Zimring, *The Next Frontier*, pp.381-395 and 359-364, respectively.

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[29] See, for example, Earl K. Wilkinson with Alan C. Atkins, *Sentenced to Death: The Truth about Englishman Albert Wilson's Sentence and Eventual Acquittal in the Philippines* (Zirndorf-Weiherhor, Germany: Book of Dreams, 2000).

[30] Johnson and Zimring, *The Next Frontier*, p.308.

[31] Hong Lu and Terance D. Miethe, *China's Death Penalty: History, Law, and Contemporary Practices* (New York: Routledge, 2007), p.80.

[32] As of September 2009, Japan had 102 inmates on death row with a finalized (*kakutei*) sentence of death.

[33] The number of executions in Japan surged to 15 in 2008—the highest annual total since 1975—but when the Democratic Party of Japan took control of government in September 2009, Keiko Chiba was appointed Minister of Justice, which is the authority that must sign an execution warrant in order for one to occur. Some informed observers believe that Chiba—a lawyer, a human rights activist, the secretary general of the Amnesty International group in Japan's Diet, and a former member of the Japan Socialist Party—is highly unlikely to authorize any executions during her tenure. One journalist even wrote that "her 20-year-long record as a death penalty abolitionist makes it a certainty that hangings will be put on hold." See Richard Lloyd Parry, "Death Penalty Opponent Keiko Chiba Made Japanese Justice Minister," *The Independent*, September 17, 2009.

[34] The "Anti-Death Penalty Asia Network" (ADPAN), an informal network of Asian individuals and organizations coordinated by Amnesty International and committed to abolition, was launched in October 2006. (link)

[35] For the argument that Japan soon will re-emerge as an assertive actor in regional and international politics, see Kenneth B. Pyle, *Japan Rising: The Resurgence of Power and Purpose* (New York: Public Affairs, 2007).

[36] *Hankyoreh*, "South Korean Government Pledges Non-Application of the Death Penalty," September 2, 2009.

[37] See *The Korea Times*, "64% of Koreans Support Death Penalty," February 21, 2009 (describing a public opinion poll that found 64 percent of adults supported capital punishment, 18 percent opposed it, and 17 percent were undecided); Sankei Shimbun, "Kankoku Yoron o Se ni: Shikei Fukkatsuron Waku," February 4, 2009; and Kim Junghyun and Jon Herskovitz, "Serial Killer Case Tests South Korea's Execution Ban," *Reuters*, February 4, 2009. As of January 2009, South Korea had 58 persons on death row.

[38] Tim Lindsey, "Sparing the Bali Bombers," *Melbourne Herald Sun*, October 15, 2007.

[39] Eva Puhar, "The Abolition of the Death Penalty in Central and Eastern Europe: A Survey of Abolition Processes in Former Communist Countries," Master's thesis, National University of Ireland, 2003; available here.

[40] Laos is also communist, and has been since the communist victory in Vietnam in 1975, but it has not carried out any judicial executions since 1989. How this has happened is unclear, for the death penalty in Laos has not been the subject of serious study.

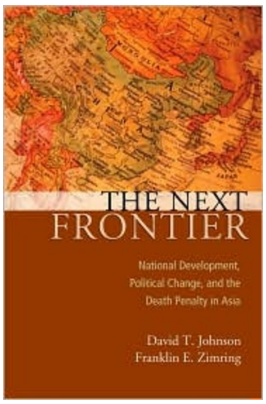
[41] Stephane Courtois, Nicolas Werth, Jean-Louis Panne, Andrzej Paczkowski, Karel Bartosek, and Jean-Louis Margolin. *The Black Book of Communism: Crime, Terror, Repression* (Cambridge: Harvard University Press, 1999).

[42] On the death penalty in Cambodia, see Johnson and Zimring, *The Next Frontier*, pp.381-382.

[43] As explained earlier, one sign of change may be the appointment of abolitionist Keiko Chiba to be Japan's new Minister of Justice. See Richard Lloyd Parry, "Death Penalty Opponent Keiko Chiba Made Japanese Justice Minister," *The Independent*, September 17, 2009. It is unclear what effect lay judge trials (which began in August 2009) will have on Japanese capital punishment. For a discussion of some of the possibilities, see Leah Ambler, "The People Decide: The Effect of the Introduction of the Quasi-Jury System (Saiban-In Seido) on the Death Penalty in Japan," *Northwestern*

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University Journal of International Human Rights, Vol.6, No.1 (Fall 2007), pp.1-23; available here.



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