

DYING FOR THE RULE OF LAW: CRIME AND CAPITAL PUNISHMENT IN JAPAN AND ITALY

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This article addresses the question of whether capital punishment is necessary in a legitimate criminal justice system. It addresses this question by comparing the incidence of serious crimes in Japan, a nation which still uses capital punishment, and Italy, a nation which has abolished capital punishment. It will discuss the difference between the two nations in their incidences of serious crime and will propose potential reasons for that difference. These reasons may include the use of capital punishment, as well as societal pressures and the history of the nations themselves. Finally, it will conclude that the main reason for the difference in crime rates is not capital punishment itself, but the way capital punishment is administered combined with the societal norms of the nations.

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I. INTRODUCTION

Capital punishment is a contentious issue worldwide in which members of the abolitionist camp and of the retentionist camp all seem manifestly stuck in their respective positions. Scholars theorize that we will not see any more abolition of capital punishment than we currently see in the world today.¹ Retribution is the most common argument for retention of capital punishment.² Belief in a general deterrent effect bolstered by anecdotal evidence for the assertion presents another justification for retention.³ Abolitionist arguments have been dynamic throughout history and have most recently centered around natural human rights.⁴ The abolitionist camp also tends to maintain that capital punishment does not actually have the deterrent effect on which retentionists insist.⁵ The justifications for retention may not seem as strong as they once were, as homicide rates do not significantly differ, and the abolitionist parts of the world have not fallen completely apart as of yet.⁶

In this article, Italy represents the abolitionist side of the coin while Japan represents the retentionist. Italy was one of the first champions of the abolitionist cause, with Cesare Beccaria being remembered as the first scholar to argue that the world should be rid of the death penalty.⁷ Italy as a nation followed on Beccaria's heels and now stands as one of the most

1. Roger Hood, *Capital Punishment: A Global Perspective*, 3 PUNISHMENT & SOC'Y 331, 339 (2001).

2. Roger Hood & Carolyn Hoyle, *Abolishing the Death Penalty Worldwide: The Impact of a "New Dynamic,"* 38 CRIME & JUST. 1, 17 (2009) [hereinafter *New Dynamic*].

3. Hood, *supra* note 1, at 343; John Lamperti, *Does Capital Punishment Deter Murder? A Brief Look at the Evidence*, https://www.dartmouth.edu/~chance/teaching_aids/books_articles/JLpaper.pdf (last visited Sept. 21, 2019).

4. *New Dynamic*, *supra* note 2, at 2.

5. See CESARE BECCARIA, AN ESSAY ON CRIMES AND PUNISHMENTS 45 (4th ed. 1983); see also Michael L. Radelet & Traci L. LaCock, *Do Executions Lower Homicide Rates?: The Views of Leading Criminologists*, 99 J. CRIM. L. & CRIMINOLOGY 489, 504 (2009).

6. U.N. OFFICE ON DRUGS AND CRIMES, BOOKLET NO. 1, GLOBAL STUDY ON HOMICIDE 11 (2019).

7. Laura Zavatta, *Controversial Theories on the Death Penalty*, 8 BEIJING L. REV. 212, 213 (2017).

prominent champions of the abolitionist cause. On the other hand, even in the late 1700s, Japan was known for commonly implementing the death penalty and was even known as somewhat of a “barbarous nation[]” because of it.⁸ Japan continues to execute certain criminals today with some degree of regularity, a cause for concern to international organizations, like the United Nations and the Council of Europe, and for Italy, an avid proponent of a worldwide moratorium on the death penalty. For these reasons, Italy and Japan will be the focus of this article in evaluating the reasons for Italy’s early abolition of the death penalty and the reasons for Japan’s continued retention and regular use of the death penalty. This article will also propose whether capital punishment can explain the disparity in crime rates between Japan and Italy or whether other aspects of each nation’s culture contribute to the difference.

II. BACKGROUND

A. Italy’s Abolition of Capital Punishment

Italy took a unique route toward abolition of capital punishment.⁹ In large part, once a State abolishes capital punishment by law, it is highly unlikely to be reinstated.¹⁰ However, all of Italy used capital punishment with varying regularity until 1876, when the death penalty went out of fashion and the nation entered a period of *de facto* abolition.¹¹ Then, Italy abolished the use of capital punishment by law in 1889.¹² Benito Mussolini restored the death penalty in 1926 as a punishment for certain crimes shortly after he came into power as a fascist dictator.¹³ The penal code expanded the death penalty to be applicable to ordinary offenses in 1930, but then removed it for ordinary offenses after World War II.¹⁴ The

8. *Id.* at 214.

9. ROGER HOOD & CAROLYN HOYLE, *THE DEATH PENALTY: A WORLDWIDE PERSPECTIVE* 49 (5th ed. 2015) [hereinafter *WORLDWIDE*].

10. Eric Neumayer, *Death Penalty: The Political Foundations of the Global Trend Towards Abolition*, 9 *HUM. RTS. REV.* 241, 243 (2008).

11. *WORLDWIDE*, *supra* note 9, at 49.

12. *Italy*, *VIASNA* (Jan. 30, 2016), spring96.org/en/news/82115.

13. Neumayer, *supra* note 10, at 243.

14. *WORLDWIDE*, *supra* note 9, at 49.

punishment was again reintroduced for ordinary offenses in response to a crime wave, but in 1947 was reduced to only military offenses during war time.¹⁵ Finally, in 1994, capital punishment was fully abolished for all crimes and remains so today.¹⁶

This analysis will start more recently in Italy's history. The Italian peninsula was home to many different States for several hundred years.¹⁷ After a collection of revolutions in the mid-nineteenth century, the peninsula eventually came together in 1861 under the Proclamation of the Kingdom of Italy.¹⁸ In 1889, the unified houses of government almost unanimously passed a penal code that abolished the death penalty throughout Italy.¹⁹ Importantly, though, this penal code did not apply to the Italian military.²⁰

Abolition was short-lived as it was reversed under the regime of Benito Mussolini in 1926.²¹ Mussolini expanded the death penalty to a number of crimes against the state and reinstated the penalty for some serious crimes.²² It is likely that this expansion was in response to several attempts on Mussolini's life.²³ During the 1930s, juries sentenced 118 people to death, 65 of whom the state executed.²⁴ Additionally, between 1927 and 1943 a Special Court sentenced sixty-five people to death, fifty-three of whom it executed.²⁵ After the fall of the fascist government in 1943, though, the Southern division of Italy abolished the death penalty once again for all criminal offenses.²⁶ During this time, capital punishment was

15. *Id.*

16. *Id.*

17. Office of the Historian, *Issues Relevant to U.S. Foreign Diplomacy: Unification of Italian States*, U.S. DEP'T OF STATE, <https://history.state.gov/countries/issues/italian-unification> (last visited Mar. 7, 2020).

18. *Id.*

19. *Italy*, *supra* note 12.

20. *Id.*

21. *WORLDWIDE*, *supra* note 9, at 49.

22. *See id.*

23. *Europe: Moving Towards Complete Abolition of the Death Penalty*, AMNESTY INTERNATIONAL (Feb. 1992) [amnesty.org/download/Documents/192000/eur010011992en.pdf](https://www.amnesty.org/download/Documents/192000/eur010011992en.pdf).

24. *Italy*, *supra* note 12.

25. *Id.*

26. *Id.*

only allowed for the offenses of collaboration with Nazis and crimes of fascism.²⁷ After World War II, Italy temporarily allowed the death penalty for certain serious crimes, including retaining it as a punishment for Nazi participation.²⁸ Between 1945 and 1947, Italy executed eighty-eight people for these types of crimes.²⁹ However, March of 1947 saw Italy's last execution for a non-military offense to date.³⁰ The Constitution of Italy, passed in December of 1947, unequivocally stated that the death penalty should only be used "in cases provided for in martial law."³¹

Since 1994, the Italian Military Criminal Code ("Military Code") has also done away with capital punishment.³² At first mention of the death penalty, the Military Code explains the inapplicability of the section to any offense.³³ The Military Code simply commutes those offenses which would result in the death penalty into the maximum sentence otherwise applicable to the offense.³⁴ Thus, in 1994, Italy officially became a part of the abolitionist camp.

1. *Why Did Italy Abolish Capital Punishment?*

Cesare Beccaria was likely the driving force for Italy's abolition of the death penalty.³⁵ His "On Crimes and Punishments" acted as somewhat of a wake-up call throughout Europe and prompted Tuscany to create the first Penal Code in modern style.³⁶ Beccaria's work was established as revolutionary immediately on its publication, as evidenced by the

27. *Europe: Moving Towards Complete Abolition of the Death Penalty*, *supra* note 23.

28. *Italy*, *supra* note 12.

29. *Europe: Moving Towards Complete Abolition of the Death Penalty*, *supra* note 23.

30. *Id.*

31. Art. 27 Costituzione [Cost.] (It).

32. *Italy*, *supra* note 12.

33. *Peacetime Military Criminal Codes: Title II On Military Punishments*, OFF. MIL. ATT'Y GEN. REPUBLIC (2006), <http://www.difesa.it/Pagine/default.aspx>.

34. *Id.*

35. *Italy*, *supra* note 12.

36. *Id.*

publication of several editions in various languages within five years of the first edition.³⁷

Italy's social values most likely played a role in its abolition of the death penalty as well. Being a part of Europe, Italy shares distinctive social features with the rest of the continent.³⁸ Relevant here, European countries generally share a skepticism of elected officials and their abilities to act in the best interest of the people whom they represent.³⁹ Europe is also known for valuing individuality.⁴⁰ In fact, the Preamble to the Charter of Fundamental Rights of the European Union states that the Union "places the individual at the heart of its activities."⁴¹

Cesare Beccaria begins his chapter "Of the Right to punish" with an assertion that a "punishment, which does not arise from absolute necessity . . . is tyrannical."⁴² Applying this principle, the authority of a government to punish comes from "necessity of defending the public liberty."⁴³ Proponents of abolition would agree with Beccaria, citing the common argument that the death penalty does not reduce crime.⁴⁴ Beccaria is also sure to mention that this right only extends to proportional punishments.⁴⁵ By proportional punishments, he means simply that the punishment must be entirely necessary and must be justified by the crime for which it is invoked.⁴⁶ Beccaria further opines that there should "be a fixed proportion between crimes and punishments."⁴⁷

37. BECCARIA, *supra* note 5, at I.

38. *Regions of Western Europe*, SAYLOR ACADEMY (2012), https://saylordotorg.github.io/text_world-regional-geography-people-places-and-globalization/s05-04-regions-of-western-europe.html.

39. Laura Silver, *How Americans and Western Europeans Compare on 4 Key Social and Political Issues*, PEW RESEARCH CENTER (Aug. 17, 2018), <https://www.pewresearch.org/fact-tank/2018/08/17/how-americans-and-western-europeans-compare-on-4-key-social-and-political-issues/>.

40. See Charter of Fundamental Rights of the European Union 2012 O.J. (C 326/02) 391, 395.

41. *Id.*

42. BECCARIA, *supra* note 5, at 2.

43. *Id.*

44. Radelet & LaCock, *supra* note 5, at 505.

45. BECCARIA, *supra* note 5, at 2.

46. *Id.*

47. *Id.* at 8.

On the topic of the death penalty, Beccaria states unequivocally that a punishment should be intended to deter others from the same crime while leveling “the least torment to the body of the criminal.”⁴⁸ The idea of respecting the body of the accused would seem to be connected to the most popular argument of abolitionists against capital punishment: innate human rights.⁴⁹ Further, Beccaria asserts that the *certainty* of punishment deters crime rather than the *severity*.⁵⁰ Instituting severe punishment will lead to men committing ever more atrocious crimes to avoid the punishment inevitable from their first crime and we enter a vicious cycle full of violence.⁵¹

Beccaria’s discussion of the death penalty is extensive and centers on whether the penalty is effective and whether the state has any right to take the lives of its citizens.⁵² His effectiveness argument parallels some current international arguments against capital punishment. Roger Hood, a prominent scholar on the topic of capital punishment, argues that there is not actually substantial evidence that capital punishment decreases instances of serious crimes.⁵³ In fact, a 2009 study by Michael Radelet and Traci LaCock found that most criminologists agree that the death penalty does not deter crime.⁵⁴ For Beccaria’s part, he details that several societies have been known to use the death penalty without any success in decreasing the society’s criminal behavior.⁵⁵ Data from the United States also provides support for this argument in that murder is more prevalent in states that employ capital punishment and less common in states without capital punishment.⁵⁶ A study by Thorsten Sellin on murder rates between 1920-1958 showed that the rate of homicide actually varied significantly between groups of states, not between states themselves.⁵⁷ Sellin also found that within the groups of states, it was impossible to tell the

48. *Id.* at 18.

49. Hood, *supra* note 1, at 331.

50. BECCARIA, *supra* note 5, at 42.

51. *Id.* at 43.

52. *Id.* at 44.

53. Hood, *supra* note 1, at 331.

54. Radelet & LaCock, *supra* note 5, at 505.

55. BECCARIA, *supra* note 5, at 45.

56. Lamperti, *supra* note 3.

57. *Id.*

abolitionist states from the retentionist ones.⁵⁸ His final finding was that the trends over time of murder rates were similar whether or not states utilized capital punishment.⁵⁹ Robespierre, one of Beccaria's closest followers, echoed and persuasively argued this proposition in a speech shortly following the publication of "On Crimes and Punishments."⁶⁰

Sellin's early- to mid-1990s study concluded that "executions have no discernable effect on homicide death rates."⁶¹ In a more recent study, investigators have still found that overall homicide rates do not respond to introduction or abolition of capital punishment.⁶² Importantly, the deterrent effect that retentionists hold onto should correspond with a decrease in murder shortly after executions.⁶³ A study in 1935 showed the opposite effect: higher murder rates after highly publicized executions took place.⁶⁴

As a further argument toward the abolition of capital punishment, Beccaria posits that the continuity of pain, not the severity, is what motivates criminals to forego their evil behavior.⁶⁵ Beccaria puts forth a common argument against capital punishment by saying that it simply presents an example of barbarity, which it is meant to work against.⁶⁶ Modern abolitionists argue that capital punishment is "counterproductive in the moral message it conveys" since capital punishment *kills* in order to discourage *killing* and other serious crimes.⁶⁷ It may even have the opposite of a deterrent effect if we are to believe the "brutalization hypothesis," which states that the death penalty legitimizes the idea of killing enemies, thereby encouraging murder.⁶⁸ There have also been limited instances of capital punishment being used as a method by which

58. *Id.*

59. *Id.*

60. Zavatta, *supra* note 7, at 214.

61. Lamperti, *supra* note 3 (quoting Thorsten Sellin, *The Death Penalty* (1959)).

62. *Id.*

63. *Id.*

64. *Id.*

65. BECCARIA, *supra* note 5, at 45.

66. *Id.* at 48.

67. *Id.*

68. Lamperti, *supra* note 3.

to commit suicide.⁶⁹ Therefore, there are instances where capital punishment is not preventive, but a cause of murder.⁷⁰

Finally, Beccaria's argument against the state having the right to take citizens' lives parallels the current and most popular argument of abolitionists which revolves around human rights.⁷¹ Related to this argument, Beccaria asserts that the death penalty breaks the basic social contract on which societies are formed.⁷² People give up small portions of their liberty to the government to maintain a society that is free to protect itself from harm, but, according to Beccaria, no one would contemplate that this would add up to a loss of his life.⁷³ Following this same logic, abolitionists argue that there is no way to ensure with absolute certainty that no state will ever execute an innocent person.⁷⁴

2. *With Capital Punishment Gone, What Happens to Crime Rates?*

With regards to actual crime rates, data from 2020 shows a steady decrease in homicide in Italy from 2014 to 2018.⁷⁵ The general rate of homicides in 2016 was 0.66 per 100,000 population.⁷⁶ This put Italy at the low end of the statistics for other nations in Europe.⁷⁷ Meanwhile, in the years closely following Italy's abolition of capital punishment for all

69. *Id.* Lamperti notes several examples of this happening, one documented by Doctor Louis West, and several listed in a book written by a warden of San Quentin prison. *Id.* In the one documented by Doctor West, the murderer shot a complete stranger and, when arrested, remarked "I was just tired of living." *Id.*

70. *Id.*

71. Hood, *supra* note 1, at 331.

72. Zavatta, *supra* note 7, at 218.

73. *Id.*; see also BECCARIA, *supra* note 5, at 2.

74. AMNESTY INTERNATIONAL, FACTS AND FIGURES ON THE DEATH PENALTY 4 (1997), <https://www.amnesty.org/download/Documents/156000/act500111997en.pdf>.

75. *Italy-Homicide Rate*, KNOEMA, <https://knoema.com/atlas/Italy/topics/Crime-Statistics/Homicides/Homicide-rate> (last visited Oct. 31, 2020) (chart made from data from United Nations) [hereinafter Italy Chart].

76. *Id.*

77. *Italy-Homicide Rate*, KNOEMA, <https://knoema.com/atlas/Italy/topics/Crime-Statistics/Homicides/Homicide-rate?compareTo=FR,DE,GB> (last visited Oct. 31, 2020) (chart comparing European Countries) [hereinafter Europe Chart].

crimes, including in the military code, Italy showed a slight rise in homicides before a steady decline for the next two years.⁷⁸ In fact, in a period of almost twenty years, Italy's homicide rate has been on a steady decline with slight increases that never reached its high point from 1991, even with the abolition of the death penalty.⁷⁹

B. Japanese Retention of Capital Punishment

Japan seems to be following the opposite pattern of the rest of the world in terms of capital punishment.⁸⁰ In fact, Japan is one of very few countries in Asia to see increases in use of the death penalty in recent years.⁸¹ Further confirming Japan's fairly odd pattern, the nation underwent a 350-year period of no capital punishment between 794 and 1195 during the Heian period.⁸² After re-initiation of the punishment, a 400-year period of large-scale, violent executions occurred, which was followed by a period of secrecy as Japan cut itself off from the rest of the world.⁸³ Japan then saw a ninety-seven percent drop in actual executions in the thirty years following 1853.⁸⁴ Moreover, after a decrease in death penalty sentences after the Pacific War, Japan saw a resurgence of the death penalty in 1993 which leads us to the current state of capital punishment in the nation.⁸⁵

Japan is known throughout the world for its low crime rate.⁸⁶ Major crimes especially are rarely committed in Japan.⁸⁷ Shortly after a drop in

78. Italy Chart, *supra* note 75.

79. *Id.*

80. WORLDWIDE, *supra* note 9, at 112.

81. David T. Johnson, *Progress and Problems in Japanese Capital Punishment*, in CONFRONTING CAPITAL PUNISHMENT IN ASIA 168, 168 (Roger Hood & Surya Deva eds., 2013).

82. *Id.* at 168–69.

83. *Id.* at 169.

84. *Id.*

85. *Id.*

86. Tetsuya Fujimoto & Won-Kyu Park, *Is Japan Exceptional? Reconsidering Japanese Crime Rates*, 21 SOC. JUST. 110, 110 (1994).

87. Robert Winslow, *Crime and Society: A Comparative Criminology of the World: Japan*, SAN DIEGO STATE UNIV., http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/japan.html

theft, between 2016 and 2017, the crime rate hit a record low for the nation.⁸⁸ However, this low crime rate is really a recent phenomenon.⁸⁹ The lower crime rate became noticeable in the late 1960s.⁹⁰ In fact, until 1965, Japan's rate of homicide was among the highest in the world and not significantly different from that of France, Italy, and the United States.⁹¹ Also important is that rates of rape in Japan were higher than in England from the 1950s and in France from 1969 until the mid-1970s then became lower than all other countries in the 1980s.⁹²

1. *Japan's Highly Criticized Capital Punishment System*

Though Japan employs highly controversial means to carry out the death penalty, the system remains popular within the nation itself.⁹³ There are nineteen crimes in Japan that carry the death penalty as a potential sentence.⁹⁴ The European Union insists that, where nations decide to continue to use the death penalty, the punishment should be limited to the most "serious crimes;" only those intentional crimes which have "lethal or other extremely grave consequences."⁹⁵ After Japan's Sixth Periodic Report to the Human Rights Committee of the United Nations, the

[https://web.archive.org/web/20120311185145/http://www-rohan.sdsu.edu/faculty/rwinslow/asia_pacific/japan.html].

88. Kyodo, *Japan's Crime Rate Hits Record Low as Number of Thefts Plummets*, JAPAN TIMES (Jan. 18, 2018), <https://www.japantimes.co.jp/news/2018/01/18/national/crime-legal/japans-crime-rate-hits-record-low-number-thefts-plummets/#.XYIrkShKjIU>.

89. Fujimoto & Park, *supra* note 86, at 110.

90. *Id.*

91. *Id.* at 113.

92. *Id.* at 114.

93. Miwa Suzuki, *Cruel, Secretive and Politically Popular: Japan's Death Penalty*, JAPAN TIMES (Sept. 12, 2018), <https://www.japantimes.co.jp/news/2018/09/12/national/social-issues/cruel-secretive-politically-popular-japans-death-penalty/#.XYZ9lChKjIV>.

94. Abolition of the Death Penalty in Council of Europe Member and Observer States, EUR. PARL. DOC. AS/Jur (2018) 44, 7, <http://www.assembly.coe.int/LifeRay/JUR/Pdf/DocsAndDecs/2018/AS-JUR-2018-44-EN.pdf>.

95. *Guidelines to EU Policy Towards Third Countries on the Death Penalty*, EUROPEAN UNION (June 29, 1998), <https://www.refworld.org/docid/4705f3d12.html>.

Committee expressed concern that some of the nineteen crimes carrying the potential for the death penalty do not fit under the definition of the “most serious crimes.”⁹⁶ The Committee seems to define “most serious crimes” as those which result in the loss of life.⁹⁷

The Japanese capital punishment system is known to be very secretive and has even been called cruel.⁹⁸ The secretive nature of the system was blatantly obvious in the way researchers from the International Federation for Human Rights were treated on their research mission in Tokyo.⁹⁹ While secrecy in the execution process is a hallmark of the Japanese system, lay judges, who act as the jury, are required to participate in the secrecy of the system in a different way.¹⁰⁰ These lay judges are not allowed to disclose anything to the public about their experiences in court.¹⁰¹ The law on the lay judge system states that “[l]ay assessors shall not disclose secrets from deliberation . . . or other secrets learned in the exercise of their duties.”¹⁰² The lay judges may even face criminal penalties for revealing secrets learned during their service as a judge: up to six months in prison and a fine of half a million Yen.¹⁰³ Another aspect of secrecy found in the Japanese capital punishment system is that the presiding judge does not describe the law to lay judges in open court.¹⁰⁴ The judge instead explains the law in the deliberation room out of earshot of the prosecution and the defense.¹⁰⁵

96. *Concluding Observations on the Sixth Periodic Report of Japan*, Hum. Rts. Comm., 111th Session, July 23, 2014, CCPR/C/JPN/CO/6 (Aug. 20, 2014) <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPrICAqhKb7yhsuBJT%2Fi29ui%2Fb4Ih9%2FUIJO9nQa93Boy0croOoLTDvEPGY0kpztyF26TNP PD6smh3p9YJ5KXGu0vYZb1NM8mpET5PRv%2FLCx0HP6sZ3QjgcWI>.

97. *Id.*

98. Suzuki, *supra* note 93.

99. See INT’L FED’N FOR HUM. RTS., *THE DEATH PENALTY IN JAPAN: A PRACTICE UNWORTHY OF A DEMOCRACY* 4 (2003).

100. Johnson, *supra* note 8181, at 180.

101. *Id.*

102. Kent Anderson & Emma Saint, *Japan’s Quasi-Jury (Saiban-In) Law: An Annotated Translation of the Act Concerning Participation of Lay Assessors in Criminal Trials*, 6 ASIAN-PAC. L. & POL’Y J. 233, 242 (2005).

103. *Id.* at 277.

104. Johnson, *supra* note 81, at 178.

105. Anderson & Saint, *supra* note 102, at 273.

Participants and officials in Japan's criminal justice system proclaim a focus on making execution decisions carefully, but several aspects of the capital punishment system undermine that statement of focus.¹⁰⁶ For instance, the guilt and sentencing stages of capital trials are combined, no differently from non-capital trials.¹⁰⁷ The system has a 99.8% conviction rate, with a significant amount of convictions "based on confessions elicited under isolation and investigative pressure."¹⁰⁸ Additionally, victims are permitted to make statements regarding punishment during the fact-finding phase of a capital trial.¹⁰⁹ Judges are within their power to deny victims the opportunity to do so, but they routinely allow it anyway.¹¹⁰ Another way in which Japan treats capital cases similarly to other criminal cases is in the lack of automatic appellate review.¹¹¹ Some inmates are even executed while waiting for approval of an appeal request or while preparing one to submit because such a request has no bearing on the Minister of Justice's authority to order an execution.¹¹² In 2017, three out of the four men who were executed in Japan had an appeal for retrial pending when they were executed.¹¹³ This practice is in contravention to one of the requirements the European Union places on nations which retain the death penalty: the requirement that anyone sentenced to death have a meaningful right to appeal.¹¹⁴ On a related note, Japanese prosecutors are permitted to appeal when they ask for a death sentence and the defendant is not so sentenced.¹¹⁵

According to Amnesty International, the Japanese Minister of Justice uses politics to aid in his decisions about ordering executions: decisions

106. Johnson, *supra* note 81, at 173.

107. *Id.* at 176.

108. INT'L FED'N HUM. RTS., *supra* note 99, at 7.

109. Johnson, *supra* note 81, at 176.

110. *Id.*

111. *Id.* at 177.

112. *Id.* at 178.

113. EUR. PARL. DOC., *supra* note 94, at para. 15.

114. EUROPEAN UNION, *supra* note 95, at III (vi).

115. Johnson, *supra* note 81, at 180.

which he makes on his own.¹¹⁶ It seems that these decisions come down in an arbitrary fashion with no real pattern.¹¹⁷ The only method of execution employed currently in Japan's system is hanging.¹¹⁸ Prisoners are held on death row for years in Japan, not knowing the date of their execution until hours before it happens.¹¹⁹ Prisoners are often kept in solitary confinement and the family of executed prisoners are generally not told about the execution until after it has happened.¹²⁰ The number of years that many inmates spend in solitary confinement combined with the fact that the inmates and their families have no way of knowing when death becomes imminent has sparked concern with the Council of Europe.¹²¹ Moreover, there seems to be a trend in Japan toward shorter waiting periods between sentencing and execution of prisoners.¹²² Japan no longer releases figures on the number of executions performed, though the last year for which it released data, 1993, showed seven executions.¹²³ December 2007 saw the first time that Japan announced the names of prisoners it executed and the crimes they committed after the executions.¹²⁴ One of the hallmarks of the Japanese criminal justice system which makes its citizens hesitant to support the abolitionist cause is that it does not provide for life imprisonment without the possibility of parole.¹²⁵

116. Nicholas D. Kristof, *Death Penalty Popular in Japan, but Rare Recently*, N.Y. TIMES (May 29, 1995), <https://www.nytimes.com/1995/05/29/world/death-penalty-popular-in-japan-but-rare-recently.html>.

117. INT'L FED'N HUM. RTS., *supra* note 99, at 7.

118. *Id.* at 10.

119. *Id.* at 24; *Japan: Two Men Hanged as Reprehensible Executions Continue*, AMNESTY INT'L (July 13, 2017) <https://www.amnesty.org/en/latest/news/2017/07/japan-two-men-hanged-as-reprehensible-executions-continue/> [hereinafter *Japan: Two Men Hanged*].

120. Kristof, *supra* note 116; *Japan: Two Men Hanged*, *supra* note 119.

121. Human Rights Committee, *supra* note 96.

122. Johnson, *supra* note 81, at 178.

123. Kristof, *supra* note 116.

124. Mai Sato, *Challenging the Japanese Government's Approach to the Death Penalty*, in CONFRONTING CAPITAL PUNISHMENT IN ASIA 205, 211 (Roger Hood & Surya Deva eds., 2013).

125. Suzuki, *supra* note 94.

David Johnson, Professor of Sociology and University of Hawaii and author of numerous published works about crime in Asia,¹²⁶ suggests that capital punishment cases in the judicial and general criminal justice system of Japan are treated just the same as all other criminal cases.¹²⁷ In other words, though the people involved in the criminal justice system in Japan agree that capital cases should be carefully decided, still “death is *not* different.”¹²⁸ For example, United States courts require an appeal in capital cases, removing the defendant’s power to refuse to appeal his sentence.¹²⁹ Japanese courts do no such thing, treating appeals in capital cases the same as appeals in any other criminal case.¹³⁰ Similarly, the United States capital punishment system requires a unanimous decision in favor of the death penalty, meaning just one juror can block the imposition of the punishment.¹³¹ Meanwhile, in Japan, the judges need only rally a majority vote to impose the death penalty.¹³²

2. *Public Perception and Public Safety in Japan*

Since the 1990s, the Japanese public has perceived both crime and public safety to be getting worse in Japan.¹³³ In fact, the crime rate did get a bit worse between 1995 and the early 2000s, but the increase was mostly in minor violent crimes, not serious ones.¹³⁴ Crime victimization rates in Japan, however, are lower than most comparable countries.¹³⁵ Still, fear of crime in Japan is among the highest in the world.¹³⁶

126. CONFRONTING CAPITAL PUNISHMENT IN ASIA xiii (Roger Hood & Surya Deva eds., 2013).

127. Johnson, *supra* note 8181, at 173.

128. *Id.*

129. *Id.* at 174.

130. *Id.*; INT’L FED’N HUM. RTS., *supra* note 99, at 14.

131. Johnson, *supra* note 81, at 174.

132. *Id.*

133. Koichi Hamai & Thomas Ellis, *Crime and Criminal Justice in Modern Japan: From Re-integrative Shaming to Popular Punitivism*, 34 INT’L J. SOC. L. 157, 158 (2006).

134. *Id.* at 161, 165.

135. *Id.* at 168.

136. *Id.* at 169.

One important aspect of crime rate that is not often studied is the quality of crime rather than simply the quantity of crimes.¹³⁷ Studies comparing crime between nations generally take into account the number of crimes that occur and take no stock of the types of crimes that occur.¹³⁸ The question that arises from this problem is whether or not the quantity of crimes can actually give an idea of just how safe a nation is in terms of public safety in general.¹³⁹

A study by Tetsuya Fujimoto and Won-Kyu Park seems to show that Japan's low crime rate has not actually contributed to higher public safety in the way that one would expect.¹⁴⁰ When the researchers took into account other causes of death such as traffic accidents, suicide, and industrial accidents, Japan's death rate was roughly comparable to other industrialized nations.¹⁴¹ Japan's low rate of homicide was a poor predictor of total deaths when taking into consideration its high rate of suicide and industrial accidents.¹⁴² Moreover, Japan shares a low proportion of violent crimes and high proportion of property offenses with other developed nations; this aspect of its crime rate is not unique.¹⁴³

3. *Why is Japan Holding so Tightly to the Death Penalty?*

Scholars have argued that the majority of Asian countries remain so attached to the death penalty because of their stubborn insistence on retaining authoritarian forms of government.¹⁴⁴ The lack of limits on the powers of the State in these countries are common to nations that retain the death penalty.¹⁴⁵ Japan, though, the focus of our study, has done away

137. Fujimoto & Park, *supra* note 86, at 110.

138. *Id.*

139. *See id.*

140. *Id.* at 115.

141. *Id.* at 118.

142. *Id.*

143. *Id.* at 120.

144. Franklin E. Zimring, *State Execution: Is Asia Different and Why?*, in *CONFRONTING CAPITAL PUNISHMENT IN ASIA* 13, 18 (Roger Hood & Surya Deva eds., 2013).

145. *Id.*

with its authoritarian regime in favor of a single party democracy.¹⁴⁶ However, it is still one of the few actively retentionist countries in the world.¹⁴⁷ Why?

One potential argument for Japan holding on to the death penalty as a punishment for serious crimes is the strength of public support for the punishment.¹⁴⁸ This is the government's official position as to why the death penalty still holds.¹⁴⁹ It is also the argument Japan invokes in its arguments with the United Nations Human Rights Committee as well as the Council of Europe.¹⁵⁰ In consideration of Japan's sixth periodic report on implementation of the International Covenant on Civil and Political Rights, the Human Rights Committee summarized Japan's position on the death penalty:

The Government believed that each State should decide on its own merits whether the death penalty should be abolished or not, with full attention given to public opinion. The great majority of the Japanese were in favour of the death penalty for the most atrocious crimes. The death penalty was imposed only in the most limited cases, for which it seemed unavoidable.¹⁵¹

Japan even campaigned for seats on the Human Rights Council of the United Nations, presenting a report to the General Assembly on the success of Japan with regards to human rights.¹⁵² This report, of course, left out any mention of the death penalty, simply addressing the finalization of treaties regarding human rights and Japan's active participation on the Human Rights Council.¹⁵³ The report even claimed that Japan would "continue to duly follow up on the recommendations it

146. *Id.*

147. *Id.* at 14.

148. *Id.* at 20.

149. Sato, *supra* note 124, at 205.

150. *Id.* at 206–07.

151. Press Release, Human Rights Committee, Human Rights Committee Considers Report on Japan, U.N. Press Release CCPR/C/JPN/6 (Jan. 16, 2014).

152. U.N. Gen. Assembly, Note Verbale Dated 15 July 2016 from the Permanent Mission of Japan to the United Nations Addressed to the President of the General Assembly, at 1, U.N. Doc. A/71/165 (July 20, 2016).

153. *Id.* at 2–3.

has received from the treaty bodies of these international human rights instruments . . .” though whether the nation has ever followed up on recommendations pertaining to the death penalty from the Council of Europe or the United Nations is debatable.¹⁵⁴

Amid threats of revocation of its observer status on the Council of Europe, Japan remains adamant that the public will not allow abolition of the death penalty.¹⁵⁵ The Council of Europe’s Parliamentary Assembly in 2008 recommended to the Committee of Ministers to “reiterate the position of principle that states enjoying observer status . . . shall not apply the death penalty.”¹⁵⁶ The Assembly further urged the Committee to “intensify its political dialogue with Japan,” and to convince the nation to abolish capital punishment.¹⁵⁷ In October 2018, the new general reporter on the abolition of the death penalty proclaimed having “issued several statements condemning the executions that have taken place in . . . Japan.”¹⁵⁸ Moreover, the Parliamentary Assembly of the Council of Europe in its Resolution 1253 (2001) stated with regard to the death penalty in Japan:

The Assembly deplores the fundamental difference in values regarding the abolition of the death penalty between the Council of Europe on the one hand and Japan and the United States on the other hand. It urges these Observer states to make a serious effort to bridge this widening gap. The Assembly decides to call into question the continuing Observer status of Japan and the United States with the Organisation as a whole,

154. *Id.* at 3.

155. Sato, *supra* note 124, at 207.

156. Eur. Parl. Ass., *Recommendation 1827: The Council of Europe and its Observer States - The Current Situation and a Way Forward*, COUNCIL OF EUROPE (2008), <http://semanticpace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbnQvbnVveG1sL1hSZWYvWDJILURXLWV4dHIuYXNwP2ZpbGVpZD0xNzYyNCZsYW5nPUVO&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdc9QZGYvWFJlZi1XRC1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTE3NjI0>

157. *Id.*

158. Abolition of the Death Penalty in Council of Europe Member and Observer States, *supra* note 95, at para. 3.

should no significant progress in the implementation of this resolution be made by 1 January 2003.¹⁵⁹

A staggering 86% of Japan's people supported the death penalty in a survey taken in 2009.¹⁶⁰ However, Franklin Zimring notes that European people supported the death penalty more than a decade after it was abolished, and argues that Japanese public support results from the nation resisting development into the democratic world.¹⁶¹ Moreover, Mai Sato conducted a more detailed public opinion survey in Japan which showed that public opinion in favor of the death penalty may be more malleable than the Japanese government asserts.¹⁶² Based on the results of this survey, Soto asserts that Japan should focus more on "whether the Japanese public will 'accept' abolition" rather than "whether a majority 'support' the death penalty."¹⁶³ There is some evidence that there is a possibility that Japan's people could move toward intolerance of the death penalty. In 2016, the Japanese Federation of Bar Associations published a statement of its opposition to the death penalty and called on the government to abolish it.¹⁶⁴

Additionally, Zimring explains Japanese retention of capital punishment with what he calls "single-nation parochialism."¹⁶⁵ As there is no multinational organization focusing on ridding Asia of the death

159. Eur. Parl. Ass., *Resolution 1253: Abolition of the Death Penalty in Council of Europe Observer States*, COUNCIL OF EUROPE (2001), para. 10 <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=16922&lang=en>. The date of the reconsideration of Japan and the United States' observer status was postponed to June of 2003. *See also* INT'L FED'N HUM. RTS., *supra* note 99, at 12. Still, as Japan continues to employ the death penalty today while maintaining its observer status with the Council of Europe, the Parliamentary Assembly did not follow through with its promise to reconsider the status. *Japan//Observer State*, COUNCIL OF EUROPE (last visited Oct. 29, 2020), <https://www.coe.int/en/web/portal/japan>.

160. Sato, *supra* note 124, at 208; *see also* Zimring, *supra* note 144, at 20.

161. Zimring, *supra* note 144, at 20.

162. Sato, *supra* note 124, at 214.

163. *Id.* at 217.

164. *Amnesty International Global Report: Death Sentences and Executions 2016*, AMNESTY INT'L 22 (2017), <https://www.amnesty.org/download/Documents/ACT5057402017ENGLISH.PDF>.

165. Zimring, *supra* note 144, at 21.

penalty, one nation's efforts go unnoticed to all the rest.¹⁶⁶ Each nation seems to simply mind its own business.¹⁶⁷ Japan itself puts forth an argument for capital punishment based on national sovereignty.¹⁶⁸ This argument asserts that human rights norms do not reach capital punishment and that there is no such thing as "customary international law."¹⁶⁹ This is not to say that Japan does not value international human rights standards, as there is clear evidence that it does.¹⁷⁰ However, in the context of international human rights, Japan makes no mention of capital punishment.¹⁷¹ Japan specifically has stated that the ideas and arguments of other countries are important, but that national considerations are more important.¹⁷² Japan emphasizes the considerations of "national sentiment, the circumstances surrounding the crimes[,] and . . . criminal policy."¹⁷³ For these reasons, Japan has maintained that the issue of the death penalty should be left to officials of each country individually.¹⁷⁴

Though Japan itself does not advance any more specific reasons for its retention of the death penalty, it is worth mentioning popular arguments throughout the world. There is minimal anecdotal evidence for the deterrent effects of capital punishment.¹⁷⁵ Those who commit crimes occasionally make statements to police that they did not use weapons or commit more serious crimes to avoid the death penalty.¹⁷⁶ Though these situations have not garnered any research interest, they may show that capital punishment can have somewhat of a deterrent effect on individual people.¹⁷⁷ Despite only this anecdotal evidence, the most widely used argument in favor of retention of the death penalty is still deterrence of

166. *Id.*

167. *Id.*

168. Hood, *supra* note 1, at 340.

169. *Id.*

170. *See* U.N. Gen. Assembly, *supra* note 152.

171. *Id.*

172. Hood, *supra* note 1, at 341.

173. *Id.*

174. *Id.*

175. Lamperti, *supra* note 3.

176. *See id.*

177. *See id.*

crime.¹⁷⁸ As Roger Hood points out, “*belief* in the general deterrent effect of more severe penalties . . . remains the cornerstone of criminal policy in many countries.”¹⁷⁹ Logically, the argument that the death penalty deters serious crime seems to flow from the criminal policies of many countries despite the lack of actual data proving this supposed deterrent effect.¹⁸⁰

4. *Japanese Societal Connection with the Death Penalty and its Implication for Japan’s Low Crime Rate*

Even with all the convincing arguments against capital punishment, Japan has never abandoned the death penalty. Why not? According to a law professor from Tokyo, capital punishment “fits well with the psychology of the Japanese people.”¹⁸¹ The professor goes further to say that it is important in Japan for the government “to be seen as punishing people who have done wrong.”¹⁸² With this in mind, there are certain social features of Japan which might contribute to its low crime rate, and I will discuss each of them in turn.¹⁸³

The first of these three social features is the “vitality of informal groups.”¹⁸⁴ The Japanese people have always had somewhat of “a heightened sense of the fatefulness of their antisocial impulses.”¹⁸⁵ “Families, companies, and religious, educational, and fraternal organizations apparently create their own distinct social worlds in which order is learned and maintained.”¹⁸⁶ Family, coworkers, and neighbors are all informal supervision for the Japanese people.¹⁸⁷ The implications of bringing shame to the family and community are always present in the

178. Hood, *supra* note 1, at 342.

179. *Id.* at 343.

180. *See id.*

181. Kristof, *supra* note 116.

182. *Id.*

183. David H. Bayley, *Learning About Crime – The Japanese Experience*, 44 PUB. INT. 55, 61 (1976).

184. *Id.*

185. *Id.* at 62 (internal quotes omitted).

186. Thomas P. Rohlen, *Order in Japanese Society: Attachment, Authority, and Routine*, 15 J. JAPANESE STUD. No. 1 5, 11 (1989).

187. Bayley, *supra* note 183.

minds of the Japanese people.¹⁸⁸ The informal system of group supervision has been in place for all of Japan's history and is strongly connected with personal attachment to others.¹⁸⁹ Even in what Western society calls private sectors, behavior is ordered.¹⁹⁰ Japanese social networks are more visible than those in other countries in that these networks always include the same named people, and those who are in the network are not substitutable.¹⁹¹

The second social feature which is important in keeping Japan at a low crime rate is the acceptance of the legitimacy of authority.¹⁹² From their children's young ages, Japanese mothers teach their children to accept authority.¹⁹³ The Japanese are less hesitant to submit to those with authority over them, including those within the informal social networks referenced above, than other parts of the world.¹⁹⁴ More evidence of this acceptance of authority figures comes in the tendency of the Japanese criminal offenders to submit to police officers.¹⁹⁵ When Japanese people are arrested they usually admit their guilt rather than deny and become obstinate.¹⁹⁶ This is because admission of guilt and some showing of contrition are necessary for an offender to be welcomed back into Japanese society.¹⁹⁷

The final social feature of Japan which may contribute to its low crime rate is that of "the assumption by informal groups of the responsibility for maintaining social order."¹⁹⁸ Thomas Rohlen describes the importance of the boundaries which these informal groups emphasize:

The explicit and very detailed specification of the expected norms for the group do more than serve to help create the sense of unity desired. They

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188. Winslow, *supra* note 88.
 189. Bayley, *supra* note 183, at 62.
 190. Rohlen, *supra* note 186.
 191. Bayley, *supra* note 183, at 62.
 192. *Id.* at 61.
 193. Rohlen, *supra* note 186, at 19.
 194. Bayley, *supra* note 183, at 63.
 195. *Id.*
 196. *Id.*
 197. *Id.* at 64.
 198. *Id.* at 61.

serve as markers for the context in which behavior has been socialized and they define the realm of participation. . . . Within this context a social persona has been defined that does not center on the assumption of choice and rational self-interest.¹⁹⁹

The boundary in Japanese culture between informal and formal authority is also more blurry than in the United States.²⁰⁰ State officials have moral authority in Japan on top of their legal authority, and the government is seen as a part of the community rather than as some force outside the community.²⁰¹ Another aspect of informal groups in Japan is that they are all relatively homogeneous and there are not many subcultural groups; the ones that do exist are small in number.²⁰² Japanese citizens also actively assist the police, as they are culturally expected to do so.²⁰³

5. *For Comparison's Sake, What About Crime Rates in Japan?*

As far as Japan's actual crime rate, the data shows that in 2016, Japan's homicide rate remained unchanged from the previous year. saw a 0.04 percent decrease in homicide.²⁰⁴ This seems unimpressive at first, but Japan's actual homicide rate in 2016 was 0.3 per 100,000.²⁰⁵ This means that in 2016, Japan had a lower homicide rate than several other Asian nations.²⁰⁶ However, in comparison with Italy's crime rates above, Japan becomes less admirable. During the same period as discussed regarding

199. Rohlen, *supra* note 186186, at 30.

200. Bayley, *supra* note 183, at 65.

201. *Id.*

202. *Id.* at 66.

203. *Id.*

204. *Japan-Homicide Rate*, KNOEMA, <https://knoema.com/atlas/Japan/topics/Crime-Statistics/Homicides/Homicide-rate>, (last visited Oct. 31, 2020) (chart made from data from United Nations) [hereinafter Japan Chart].

205. *Id.*

206. *Japan -Homicide Rate*, KNOEMA, <https://knoema.com/atlas/Japan/topics/Crime-Statistics/Homicides/Homicide-rate?compareTo=CN,KR,ID,HK>, (last visited Oct. 31, 2020) (chart comparing Asian countries) [hereinafter Asia Chart].

the period before and soon after Italy completely abolished the death penalty, Japan's homicide rate experienced more increases as well as staying at a similar level while Italy's rate has steadily decreased.²⁰⁷

III. DISCUSSION

Italy has shown itself to be a nation committed to the abolition of capital punishment throughout the world, not just locally. With Tuscany as the first ever European state to abolish the death penalty, it was already clear that Italy was a step ahead of the rest of the world in terms of abolition. Moreover, Italy has retained its commitment to abolition even in modern times. Italy is one of the loudest voices on the world stage advocating for a worldwide moratorium on the death penalty.²⁰⁸

Italy has also maintained a pattern of decreasing crime rates over the past twenty years, during which time the death penalty has been completely out of use.²⁰⁹ It is clear that Italy's homicide trend is downward, and it is abundantly clear that this trend is not due to the death penalty.²¹⁰ Though raw data can never tell those who read it exactly what it means, we can draw some insight from it to say that there is at least a possibility that the death penalty has little effect on crime rates. The fact that Italy's crime rate has not increased significantly alone lends support to its adamant insistence that the death penalty is not worth the alleged human rights violation.

Meanwhile, Japan has been one of the loudest voices on the world stage advocating for capital punishment to remain the choice of the State, and, by extension, the people. Over and over, the Japanese government suggests that the public of Japan wants capital punishment on the books

207. *Japan-Homicide Rate*, KNOEMA, <https://knoema.com/atlas/Japan/topics/Crime-Statistics/Homicides/Homicide-rate?compareTo=IT>, (last visited Oct. 31, 2020) (chart comparing Japan and Italy) [hereinafter *Italy-Japan Chart*].

208. See Michael Leonardi, *Italy's Campaign to Abolish the Death Penalty*, COUNTERPUNCH (Jan. 6, 2007), <https://www.counterpunch.org/2007/01/06/italy-s-campaign-to-abolish-the-death-penalty/>; see also *Italy Fights Death Penalty*, SBS NEWS (Aug. 23, 2013), <https://www.sbs.com.au/news/italy-fights-death-penalty>.

209. Italy Chart, *supra* note 76.

210. See *id.*

and the government is simply honoring its end of the social contract.²¹¹ Japan's government maintains that its obligation is to its people who approve of its use of the death penalty.²¹² Japan's capital punishment system is also spurred on by the lack of knowledge regarding its practices throughout the world and even within Japan's own borders.²¹³ Japan has always maintained a highly secretive system even while many world leaders criticize it.²¹⁴

The United Nations and the Council of Europe have continuously pushed back against Japan, arguing that the death penalty is an issue of international human rights rather than an issue of national sovereignty.²¹⁵ Japan maintains that there is no international law except the one that a nation chooses to adopt and sign for itself.²¹⁶ Further, Japan maintains that it is indeed a nation committed to international human rights and that it goes far to protect human rights within its borders.²¹⁷ The Council has expressed concern several times that Japan has failed to implement or to take steps to implement all the recommendations pertaining to the death penalty.²¹⁸ There is no indication that this dispute between international organizations and Japan will end in the near future.

Japan has maintained a low crime rate in recent years, which merits an inquiry into the reasons for it and how the rest of the world can take steps to see the same results. Though an obvious possibility is Japan's retention of the death penalty, there are other persuasive theories which take capital punishment out of the running as a contributor to the low crime rate.²¹⁹ Some important potential contributors to Japan's low crime rate are the unique features of Japanese society which differ from the characteristics in Western countries in terms of authority, social relations, and responsibility for others.²²⁰ Interestingly, these social characteristics offer

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211. Sato, *supra* note 124, at 206–07.
212. See *supra* Section II.B.3 and accompanying footnotes.
213. See *supra* notes 96–103 and accompanying text.
214. Suzuki, *supra* note 94.
215. See *supra* notes 152–56 and accompanying text.
216. See *supra* notes 162–71 and accompanying text.
217. *Id.*
218. See *supra* notes 152–56 and accompanying text.
219. Bayley, *supra* note 183, at 61.
220. *Id.*

not only an insight into why Japan has such a low crime rate, but also why Japan has hung on to the death penalty for all this time. The importance of taking responsibility for one's actions is paramount in Japan and death is the price one can pay for heinous crimes. The social structure of the nation almost demands this type of retributive justice.

Moreover, Japan's low crime rate is not the only factor that retentionists should consider. Though Japan shows a very low average homicide rate over the years, it is more static rather than showing an average downward trend, like Italy's chart shows.²²¹ Japan's overall trend is not nearly as impressive as Italy's. Japan shows an increase in crime rate for several years within the last ten while Italy only shows an increase in two of the ten years.²²² One chart cannot decide whether the death penalty actually works as a deterrent against crime. However, the comparison of these two can at least raise a question as to whether the death penalty is really the main contributing factor to the low crime rate that has pervaded the conversation around Japan and capital punishment.

The numerous differences between Japan's and Italy's social structures lend well to comparison of these two nations in terms of the need for capital punishment. The most important consideration here is the overall crime rate. Crime rate is one of the persistent differences between the two nations. Italy maintains a crime rate at a low level compared to other European nations.²²³ Meanwhile, Japan maintains a compellingly low rate of crime in recent years.²²⁴ However, this difference is minimized when we consider the recent trends of crime rates. Italy shows a general downward trend.²²⁵ Japan's downward trend does not seem nearly as strong.²²⁶ Japan and Italy also differ in their social structures and how each nation holds its citizens accountable. Japan makes use of informal groups and informal authority to maintain a social order that Japanese children learn from a young age.²²⁷ Meanwhile, Italy is part of the Western world

221. See Italy-Japan, *supra* note 207.

222. See *supra* notes 75–79, 201–04 and accompanying text.

223. See *Italy-Homicide Rate*, *supra* note 75.

224. *Japan-Homicide Rate*, *supra* note 205.

225. See *Japan-Homicide Rate*, *supra* note 208.

226. See *id.*

227. Rohlen, *supra* note 186, at 19.

that places great emphasis on the individual liberty and personal choices of each person.²²⁸ Of course, the contrast in question in this article is the fact that Italy has abolished the death penalty while Japan maintains it as a punishment for certain crimes.

Despite Japan's low crime rate, which has impressed scholars for as long as it has been noticeable, the question remains whether it is worth the low crime rate if human rights are arguably violated in the pursuit of it.²²⁹ Scholars and international organizations have taken to criticizing Japan's capital punishment system.²³⁰ The European Union and the Council of Europe have expressed concern about Japan's capital punishment system and the ways in which inmates live and die.²³¹ The Council of Europe has even threatened to revoke Japan's observer status over the practice, though the Council has never followed through on that threat.²³² Japan, for a nation that proclaims its commitment to human rights in every facet of its governmental activities,²³³ arguably does not show any commitment to the human rights of its own citizens who have been sentenced to death.²³⁴

IV. ANALYSIS

As a part of Western Europe, Italy shares societal features with places like Great Britain and France.²³⁵ These social features are in direct opposition to the way in which Japan's society acts and makes its assumptions.²³⁶ Western Europe focuses on individuals while Japan focuses on informal groups.²³⁷ Western Europe does not fully trust those it entrusts with the law while Japan vests immense authority in its

228. Charter of Fundamental Rights, *supra* note 40, at 395.

229. *See supra* notes 85–91 and accompanying text.

230. Human Rights Committee, *supra* note 96; Suzuki, *supra* note 94.

231. *See supra* notes 152–56 and accompanying text.

232. *Id.*

233. *See* U.N. Gen. Assembly, *supra* note 152, at 1.

234. *See supra* Section II.B.1 and accompanying notes.

235. SAYLOR ACADEMY, *supra* note 38.

236. *See supra* notes 227–28 and accompanying text.

237. *Id.*

officials.²³⁸ The Japanese people even vest significant authority in those who are not legal officials, while Western Europe vests in each person the authority to govern himself.²³⁹

Japan, being on a different continent, presents completely separate social features from those present in the western region of the world. While this difference may not be satisfactory as the sole explanation for the crime rates in Japan, it may go far in contributing to the difference in crime rates. These social differences may also provide an explanation for why, despite the lack of evidence of actual deterrence of crime, Japan remains committed to its right to use the death penalty if it so chooses. As one scholar put it, the death penalty “fits well with the psychology of the Japanese people.”²⁴⁰ The importance of the visibility of punishment and the moral authority of those entrusted with the laws offer an intuitive potential reason for retaining capital punishment, while the monitoring by informal groups combined with the moral authority of those entrusted with the laws may offer a potential reason for the low crime rate.²⁴¹

One important consideration for the world is whether Japan’s method of employing the death penalty is humane enough to survive scrutiny, even if it is ever proven as the reason for Japan’s low crime rate. Japan’s practices have been described as cruel²⁴² and barbaric,²⁴³ and the Council of Europe and the United Nations have both condemned the practices as well.²⁴⁴ It is not clear whether the death penalty provides a reason for Japan’s low crime rate. What is clear is that a large portion of world institutions and governments find Japan’s capital punishment practices unsavory and, in some cases, unacceptable.²⁴⁵

Meanwhile, Italy’s continuing decline in crime over the last twenty years lends at least some support to the idea that, even if the death penalty deters some crime, abolition of capital punishment will not automatically

238. See Charter of Fundamental Rights, *supra* note 40, at 9; see also *supra* Section II.B.4 and accompanying notes.

239. *Id.*

240. Kristof, *supra* note 116.

241. See generally *id.* (discussing the importance of the visibility of punishment and that of informal groups).

242. Suzuki, *supra* note 94.

243. Zavatta, *supra* note 7, at 214.

244. See *supra* notes 152–56 and accompanying text.

245. See *supra* Section II.B.1 and accompanying notes.

cause the opposite result. While the two nations have radically different crime rates, Italy, without capital punishment for twenty years now, has not shown the rapid increase in crime that we would expect if the death penalty was indeed effective in its deterrent purpose. In this comparison between these two countries, Japan demonstrates a collection of social and governmental institutions which sing the praises of capital punishment. Italy, however, demonstrates an avid commitment to the entire world becoming free of government sanctioned killing.

The world may never get a definitive answer on whether the death penalty contributes to lower crime rates. However, the simple abundance of other potential factors provides a persuasive reason to think not. The inability of either side to actually appreciate the other's position is likely a strong impediment to reaching a compromise or any sort of understanding. The world may never see Japan abolish capital punishment and may also never see proof one way or another establishing its effectiveness.

V. CONCLUSION

Japan's low crime rate is seen as impressive throughout the world. It is worth more study to find out what the rest of the world can do to decrease crime to equal or bypass the low levels of crime in Japan. However, capital punishment is, at the very least, not likely the sole cause of the low crime rate. While it may be a contributing factor, capital punishment cannot be separated from the informal social structures and institutions of authority in Japan. The question remains: what is the main contributor to the nation's extremely low crime rate, the former or the latter?