

Death penalty abolition theory
Advocacy of the abolition of capital punishment

Masahide Maruyama

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I Background and reason for the abolition of the death penalty

The number of violent crimes is increasing, and deterrence by the death penalty is required, but it is rather indefinite than the death penalty.

The sentence and life imprisonment are more severe for the accused, and this may be more deterrent. Ma

Also, the public's legal conviction that those who kill people should be punished, the social retribution, or

From the perspective, only the death penalty can satisfy the expectations and satisfaction of the victim's relatives.

It's easy to think, but I don't think so. This is continuous and occasional

It is something that must be added 1. From this point of view, heavy life imprisonment and life imprisonment are better.

They can be satisfied. When the death penalty is executed, 100% of these are done at once.

It's easy to get the illusion that you can give your satisfaction, but that's a mistake.

Unlike the death penalty, which ends with temporary suffering, it is inherited by an analog "total amount of suffering" index.

These are the heavy life imprisonment and life imprisonment that can satisfy these continuously and at any time.

I think that it is suitable for responding to the emotions of.

1. Main reasons for abolition

1 Kenzo Mihara, "Genealogy of Death Penalty Abolition Theory," p. 127 (Seibundo, 6th Edition, 2008), Shigemitsu Dandou, "Death Penalty Abolition Theory," p. 4, 315 Pages, 328, 477 (Yuhikaku, 6th edition, 2000), and many others.

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- (1) Abolition theory on the grounds of misjudgment
- (2) Based on damages. Have the perpetrator rescue the victim's family if he is sentenced to life imprisonment
- Can be done. ²
- (3) Is it right or wrong to kill humans with power?
- (4) The retributive nature of the death penalty. Whether it is effective in crime prevention. The death penalty is not menacing.
- Make sure that most of them are murdered for sexual reasons, either driven by passion.
- Awareness that even if the crime is discovered and the sentence is executed and sentenced to death, it will be sentenced to death
- However, it rarely commits a crime. It is thought that the death penalty is not intimidating here.
- This is the point. In addition, considering that crimes are committed due to economic factors,
- It is clear that the death penalty is not menacing. Also, the impact on executioners is one.
- It must be said that the death penalty is not intimidating because it is timely and limited. crime
- It is not only the lightness of punishment that threatens the occurrence of crimes, but also the certainty of crimes and criminal charges.
- It can be said that it is certainty and the speed of punishment for it.
- (5) Family problems left after execution. The death penalty imposes a burden, especially on the perpetrator's family.
- (6) There is no ethnic conviction about the retention of the death penalty. "Killing a person should take away his life"
- Is there any national legal conviction such as?
- (7) There is a suspicion that it may be a "cruel punishment" in the Constitution. The death penalty
- It spreads brutality to the general public and produces results that disregard human life.
- (8) Execution is the continuation of national (administrative) execution (in the sense of continuing free sentence)
- In other words, it means abandonment of rehabilitation and education of prisoners. Say negligence or escape
- You may. Executioners are said to be effective from the perspective of eugenics and cost reduction.
- However, considering this point, discussing the effectiveness of executions is an escape.
- (9) From the perspective of eugenics, is it okay to kill those who cannot be rehabilitated? Ignoring humanism
- To. Execution of the sentence should be continued as long as there is a possibility of starting rehabilitation (continuation of the free sentence)
- In that sense). If you die, you will be deprived of all opportunities for rehabilitation. punishment
- What those who do not understand that the essence of is to give the opportunity of human remodeling
- Is.
- (10) The death penalty is based on revenge and goes against the idea of reformism.
- (11) Opinion polls do not reflect public opinion correctly. If you want to do a poll
- It should be done after reflecting the opinions of both abolitionists. Also, the deprivation of life
- It is not appropriate to determine serious problems by number alone.
- (12) Receive the death penalty for wanting to die. Therefore, it is not allowed to commit a crime. Criminal conduct
- It is the privatization of politics. The perpetrator's right to die should not be granted. Also, without the death penalty

² Mihara, supra note (1) pp. 234-243.

- For example, the death penalty can reduce crimes committed for the purpose of dying.
- (13) Contradictory to the state's prohibition of murder.
- (14) Of the defendants charged in murder cases, few are actually sentenced to death.
- Therefore, under the current system, among the bereaved families of murder victims, emotional recovery by the death penalty and redemption of perpetrators
- Few can be guilty.
- (15) Even if the bereaved family of the victim asks the Ministry of Justice not to execute the death penalty on death row prisoners, the death penalty
- Has been enforced, which is hurting rather than restoring the emotions of the victim's bereaved family.

II Claims regarding the abolition of the death penalty

³ for criticism that the abolition of the death penalty emphasizes the perpetrator and neglects the victim . → After the abolition of the death penalty

The administrative government will focus on measures to correct criminal offenders, and certain people will focus on perpetrators.

It is expected to criticize. However, the Basic Law 4 for Crime Victims was enacted in 2004, and

Victims of crime (victims and their families and bereaved families) recover or mitigate the damage they have suffered.

Assisting victims of crimes to lead a peaceful life again, and criminals involved in the damage

Measures to be able to properly participate in the procedures related to (for crime victims, etc.)

It is stipulated that it is the responsibility of the national and local governments to take the measures. In addition, crime victims, etc.

Take great care not to harm the honor or peace of life of the national and local public bodies.

The public is encouraged to cooperate with the measures taken by the body for victims of crime.

It is stipulated as a responsibility that must be endeavored. As an example, for a victim, by a crime

Take measures such as mental care after being damaged, and compensate victims and their families

Can be mentioned. These dodge this criticism. ⁵ In addition, a 2007 criminal complaint

The revision of the Litigation Law introduced a system for participation of crime victims in criminal trials, and criminal courts for crime victims.

This is very significant as it paves the way for participation in the court.

No matter how bad the bad guys are, they will live in the world after that.

It may do something useful or positive for you. The perpetrator is sentenced to death

Not only is it humanely unfriendly, but it also deprives the perpetrator of the opportunity to do such a job.

Also, an opportunity for the perpetrator to live his or her own life and always make amends to the victim.

Will be robbed. Mourning and respecting victims while working for themselves and society,

compensate. It may be rude to the victims and their families, but "the victim's life is straightforward.

I can say "Uta". Innovation to break the global economic blockage in recent years

³ Mihara, supra note (1) p. 148.

⁴ December 8, 2004 Law No. 161 Crime Damage Protection

⁵ Mihara, supra note (1) pp. 234-243.

There is a need for human resources who can demonstrate their active abilities, and in order to innovate,

It is necessary for many people to take on various challenges. Extreme way of saying

However, it is required to challenge the perpetrators of such crimes.

It can be said that they have the right to challenge again. Also for innovation

Therefore, based on the profit generated, the effectiveness of compensation for the victims and their families mentioned above is high.

It can also be found.

If the perpetrator is the worst person who only annoys others, lives the worst life, and is the victim

Even if your family feels upset, if you convert afterwards, you will be the perpetrator.

You can always make amends to others. If you've been sentenced to death, that's it.

is there. We do not know that the perpetrator is suffering or that he is compensating for the victim.

To the extreme, even if the perpetrator ends his life in prison without being rehabilitated, such a bad guy

Even in the meantime, he does not give up and execute the death penalty if he cannot rehabilitate. That way for the rest of my life

Even if you finish, isn't it all right? Trying to rehabilitate the perpetrators as a nation

By continuing to make efforts, we can show the world that kind of attitude that we will not give up.

I think that it is important in itself.

The death penalty is conscious of death, that is, it will die after it is known that it will die. Usually not

It can only happen if you are sentenced to a curative illness and die. Such sacrifices only against death row prisoners

Does the nation have the right to force sacrifice? A person, even a vicious criminal who claimed his life

There is a right. Also, you will be forced into such a situation and waste your life.

Isn't it a loss for society as a whole? (On the contrary, a life that is mentally strong and left hard

There are people who can spend it meaningfully, but such people are rare).

I argue that the death penalty should be abolished.

III About misjudgment

Also, I would like to mention here the misjudgment. The main reasons for abolishing the death penalty are listed in I in the previous chapter.

As soon as possible, a person who is sick and accidentally executed by misjudgment and ruined his life

I will mention it here to get rid of it. Misjudgment occurs as an institutional, legal norm, and more realistic problem

We are currently in a situation where we have no choice but to do so.

1. How to catch and resolve misjudgment as an institutional or legal normative problem

For example, the range of evidence available in criminal trials is limited. Is it from the perspective of preventing human rights violations?

As a result of emphasizing proper procedures, some were prohibited from being brought to court as evidence.

The investigation of the truth should be emphasized. If the defense counsel goes to court to record all cases

It should be available for viewing at any time. Inspection that has all the evidence about the case

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The agency should not decide at its own discretion, even regarding the presentation of evidence (impeachment investigation).

Emphasis on view). A thorough impeachment machine to prove the prosecutor's claim by the accused with sufficient impeachment ability

It is a guarantee of the association. It is the activities of investigative agencies (finding the truth for the people) and suspects and others.

It also means seeking the most rational harmony with the human rights of those involved. Solve the crime

In order to protect the safe life of the people, the investigative agency arrests the criminal efficiently and accurately, and evidences

Must be able to collect. However, crimes are often secret in nature.

Therefore, the investigation is not easy. To some extent, there is a risk of forced disposition that involves human rights violations.

It is essential. However, the abuse must not cause human rights violations. The investigation is always that

It must be done properly while maintaining a rational harmony between necessity and human rights protection.

Not.

→ Principle of voluntary investigation · Adoption of warrant principle for compulsory disposition.

Currently, there are the following systems as a means to prevent misunderstandings.

(1) Indirectly prevent coercion of confessions by denying the ability to prove confessions due to coercion, torture, etc.

are doing. (Article 38 of the Constitution, Article 319 of the Code of Criminal Procedure)

(2) Indictment single principle

Attach documents and other items that may cause prejudice to the public prosecutor,

Or do not quote its contents.

(3) Discovery

The prosecutor has evidence related to what the accused intends to claim

If so, the disclosure can be requested.

(4) Evidence trial principle (Criminal Procedure Article 317,)

Fact-finding must be evidence-based.

* The evidence here does not mean any evidence, but in principle,

(1) Evidence that is allowed to be submitted to court (evidence with proof ability)

(2) It is useful for accreditation (Proof power (between the credibility of the evidence and the evidence and the facts)

(Depends on the size of the relevance)),

③ Evidence must have passed the procedure for examining evidence stipulated by law → Illegal collection

Evidence exclusion

Means that.

When it is allowed to be used for fact-finding in a trial, it is said to be "evidence-capable".

Say. There is no general provision in the Code of Criminal Procedure regarding the ability to prove. Inviting misjudgment

Something like a mere rumor, imagination, or opinion that could be dangerous lacks evidence and is wrong.

Evidence collected by law may also be denied the ability to prove. And regarding the ability of evidence

The most important rule to do is

- ① Elimination of hearsay evidence

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(2) Confession law (excludes confessions that are suspected of lacking voluntariness. Article 38, Paragraph 2 of the Constitution states,

Confession due to torture or intimidation or self after being detained or detained for an unreasonably long time

White cannot use this as evidence. "The confession is true.

Even if it turns out to be there, it cannot be evidence.).

(5) Corroborating law

Confessions alone are not enough to convict the accused. Only confessions like this

It is called the corroborating law that it cannot be found guilty if there is no basis. The only disadvantage to the accused

If the evidence is a statement by a third party, that alone can convict the accused.

And why do we need proof of reinforcement only for confessions? First of all, confessions are a criminal experience

This is because there is a risk of being overestimated as a confession of a person. For that, a confession

Has historically been the most valued of the evidence, but on the other hand, it is voluntary.

There were many cases in which misjudgment was caused by a false confession. Be a third party statement

For example, there is an opportunity for counter-examination, but the confession does not.

So far, I have listed a number of systems to prevent misjudgment, but in reality, misjudgment still occurs.

There is. For others, we suggest that the following solutions be implemented.

(6) Full visualization of interrogation

The challenge for the future is how to prevent human rights violations and psychological consequences during interrogation.

Is how to realize in a rational way. For that purpose, adopt the following system

Present. Of course, the quality of the defense counsel in charge of defendant's defense is required to realize full visualization.

Needless to say, it is necessary to improve the system and improve the system on the defense counsel side.

(1) Confirmation of recording from which stage of the criminal procedure to which stage is obligatory.

(The same applies to procedural issues such as the ability to prove recorded recordings in the event of a breach of this obligation.

(Note that it sometimes happens) 6

② Limitation of interrogation time

③ With or without the consent of the suspect

④ Attorney witness

What is important is that it does not excessively interfere with the purpose of the investigation and is easy to introduce.

It means that it must be selected.

(7) Legislation for full disclosure of materials

There is no provision that can request the defense counsel to "show me all the materials that the prosecution has"

Is currently the problem. Therefore, see all the evidence on hand of the prosecutor on the defense side.

6 "Law Time Report February 2011", p. 9 (Nihon Hyoronsha, 2011).

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The obligation to do so should be stipulated. Protecting human rights such as privacy, or proper judgment
Confidentiality should be imposed on lawyers who see the disclosed evidence in light of the proceedings.
Is natural.

(8) Appropriate interrogation of suspects

Investigating the suspect by an investigative agency so that the suspect can substantially retain impeachment
It is necessary to separate it from its position as an object. ⁷The suspect is mentally exhausted
That is, no matter how much the prosecutor's claim should be contested, the prosecutor's claim can be proved.
It is swept away and the weaknesses of the prosecutor's allegations cannot be revealed.
In that case, the defense activities that lawyers can actually carry out will be limited. Interrogation of suspect
The following three are necessary to realize the optimization of.

① Denial of the suspect's obligation to interrogate

Affirming that Article 38 (1) of the Constitution recognizes the right to remain silent and the obligation to accept interrogation
Points that are inconsistent with, or detention such as arrest and detention are for the purpose of interrogation
It is not a thing, and it is requested by a public prosecutor, a public prosecutor's office, a judicial police officer, etc.
Even if you are obliged to appear and stay in the interrogation room, you are not obliged to respond to the interrogation.
From this point, the suspect is not obliged to respond to the interrogation.

② Effective guarantee of the right to remain silent

In reality, maintaining the right to remain silent is a difficult technique, and is the fact of silence other evidence?
They opened their mouths because they were backed up, and some of them succumbed to the police interrogation.
It is said that it may end up. For this reason, the suspect is before or during the start of the interrogation.
If you can judge that you are exercising your right to remain silent, such as when you are actually silent inside,
For matters that remain silent, be sure to take measures such as stopping forcible interrogation.
Should be able to be implemented.

③ Emphasis on objective evidence and forensics

If you try to proceed with the investigation by relying on subjective assumptions and intuition, the investigation will be distorted.
come. As one of the measures, in principle, multiple items are used to prevent misidentification.
Mandatory request for appraisal can be mentioned.

(9) Directism / Oralism (The court itself directly examines and evaluates evidence and witnesses in court and evaluates them.

Substantialization of the principle of making a trial based on the oral argument of the person concerned) ⁸
By placing the record at the center of the formation of evidence, the investigative agency is at the investigation stage.
Inevitably the interrogation becomes inquisitorial and confidential due to the eagerness to collect the confession evidence.
There is a meaning to avoid. Inquisitorial and confidential interrogation deprives suspects of voluntariness

⁷ (Note (8) "Law Time Report", P45)

⁸ (Note (8) "Law Time Report", pp. 42-43)

I was forced to make a statement in the midst of the accident, and the false statement I made in distress was judged as it was.
It is more likely to cause miscarriage and false accusations because it leads to the formation of the judge's feelings.
I will end up.

(10) Democratization of courts, prosecutors, and police

The organizational structure of courts, prosecutors, and police must be reformed to be democratic.
Must be. Partial entrustment, monitoring, and monitoring of the operation of each organization to the general public
By controlling, the structure of the inquisitorial and closed criminal procedure is changed and carried out.
Can be stopped. In addition, this triggered the judges, prosecutors, and

Citizens by fully guaranteeing their rights as citizens and maintaining their independence to police officers

As a member of society, we can have a common sense of human rights and a sense of life. And

That leads to prevention of false charges and misjudgments.

① Democratization of the court

Judges judge only by law, conscience, sense of human rights, sense of citizenship, etc.

In order to do so, it is necessary to maintain the independence of judges. for that purpose,

Judiciary administration held by elite judicial bureaucrats, especially judge personnel

Need to be entrusted to an autonomous organization of judges, or open recruitment system to make it transparent

There is. Where and what are the grounds for appointments, salary increases, posts, etc.

In a world where there is no such thing, many judges think that they are unobtrusive and safe and self-regulate.

I will end up. Currently, the judicial council of each court is the judiciary before the legal construction.

It is said that it is the subject of politics, but in reality its authority is delegated to judicial bureaucrats.

It has been handed over and concentrated, and the Judges' Meeting has become a mere ghost. Activate this judge meeting

What is it to make it the subject of judicial administration in both name and reality by expanding and strengthening its authority?

I also need it.

② Democratization of the prosecution

To add democratic control to the prosecution's activities by the general public

Prosecution examination that examines not only the propriety of non-indictment but also the propriety of prosecution by the prosecution examination committee

I think that authority should be granted. Also, as with the democratization of courts, prosecutors

Independence can be guaranteed so that activities can only be carried out by law and conscience.

You will need it. Therefore, in terms of personnel affairs inside the prosecution, democracy

A system must be established to control the target.

③ Democratization of police

Currently, the National and Local Public Safety Commission, which consists of members including civilians, is in charge of police management.

It's true, but in reality, the National Police Agency is in full control, and its democratic reform

Is the first decision.

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By actually operating the above system, at least institutional and legal regulations

In the paradigm, try to exclude all factors that regulate the use of evidence to prevent misjudgment.

Should.

2. How to catch a misunderstanding as a realistic problem and solve it

There is no guarantee that the individuality of a judge will not lead to misjudgment. The proof of evidence is the judge's self

It is left to good judgment. It also depends on the ability of the judge and professional inertia. Professional

In terms of inertia, for example, once a court is found guilty in the first instance,

The judge of the second trial thought that "the judge of the first trial would not be wrong" and tried

Because it corresponds to, it is difficult to detect the error of the judgment of the first instance. Besides, once out

If you turn over the judgment, the authority of the court will be shaken, so it is a court.

I want to avoid it as much as possible. Judges have a greater sense of human rights, away from professional inertia

Citizenship should be strong. Protecting one's own organization, such as the existence of a judicial system

I want you to stop disregarding human life. To do so, the death penalty

It must be abolished by all means. Innocent people are legally killed as long as there is a death penalty

The danger is that it will continue to exist as the fate of the trial. The death penalty will be executed once

And we must know again that the facts are unlikely to come to light.

And in order to avoid this, it is necessary to utilize the Saiban-in system. Other occupational inertia

In that respect, judges have a strong sense that it is difficult to let the criminal escape in their heads.

Can be mentioned. Also, it depends on how the judge's career is built and the constitution of the organization. It's big. Among the current judges, the suspects and accused who are detained in the detention center and the defense

Few people have ever spoken through a shielded version. They are detained by a person

What kind of psychological state do you get when you are harshly interrogated by a police officer?

I can't understand exactly why I confess a lie. Youth in your twenties

After that, in a closed bureaucracy, while being chased by numerous incidents, he earnestly

"Give deep insight into society and humans," to a career judge who has no choice but to spend time.

Even if they demand, it is not easy for them to recharge it in reality.

To change that, expand the system that allows judges to experience the work of lawyers for a certain period of time.

I think it is good. From the standpoint of the parties, how great the judge looks and how close the prosecution is

If you can feel it, I think it may have a positive effect on your judgment and actions as a judge.

A collection organized by judges and members of research groups advocating constitutional protection

In some cases, when I attended the meeting, it seemed that I was "refused to reappoint" or "disciplinary action".

There were even cases. Judges interact with citizens to spread their insights and earnestly improve themselves

Stacking is never easy in reality. Also, in Japan, not guilty

The prosecutor can appeal and appeal the decision, and the appeal decision will be revoked.

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Just in case, the judge has kept the ironclad rule of the criminal trial that "in dubio pro reo is in the interest of the accused".

Absent. On the contrary, even more formal evidence is available than a judge who practices this iron rule properly.

For example, a judge who is bullishly convicted is rather "mainstream" inside the court.

There is even a reality. Changing the harmful effects of bureaucratic judiciary, which is contrary to common sense,

It will be an issue of impatience. So far I've focused on judges, but of course it's a misjudgment.

The cause is not only the judge, but also the ability of the prosecutor and the defense counsel, and the human nature.

I would like to add a key to the end.

In addition, there is a point that the rigid media reports are causing misunderstandings. To trial

There are reports about it, but the direction is moving toward eliminating false accusations.

Maybe it doesn't have enough power. I was surprised to report

It may be. It's a hassle if you write a disadvantage to the police or the court and get a complaint

Because it is. If so, it's safe to say that it's an article about "I reported it for the time being".

It will be a good thing to do.

As mentioned above, we regard misjudgment as an institutional, legal norm, and realistic problem, and discuss how to solve it.

However, even if you just do it and make the error rate as close to zero as possible, the error will still occur.

As long as human beings make a trial, it is practically inevitable. No matter how carefully you proceed with the trial

Under the three-trial system, the possibility of misjudgment cannot be eliminated. 9 In case of misjudgment, life

If you lose it, it will be irreparable. Losing life is more than losing property, freedom and time

It is irreparable. If they are all the same, there is no reason to punish the murder particularly heavily

It will be. Miscarriage can be made in trials other than the death penalty, but false accusations lead to despair in prison.

It cannot be argued that ending is a completely irreparable sentence similar to the death penalty. Because

Life lost due to long-term imprisonment will be fully reclaimed if financial compensation is received

It can be argued that it is partially irreparable, not irreversible.

Is. The death penalty should be abolished to the extent that misjudgment can occur.

IV At the end

Not only from a legal point of view, but also various factors such as ideas, beliefs, and religions are intricately intertwined.

The issue of the death penalty is abolished, and it is common or common regardless of which factor is emphasized.

Theories and principles do not hold in any case, so the greatest common divisor theory and principles are established.
We must be careful that we should. The reason for the death penalty throughout

There are many reasons for abolishing the death penalty, and it is logically superior in terms of convincing and persuasiveness.

9 Mihara, supra note (1) page 190 and below

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If it is also excellent, the death penalty will be abolished as soon as possible considering the greatest common divisor from the background and reasons for the abolition of the death p
It should be realized suddenly.

Logically or how it is necessary to abolish the death penalty in order to achieve it immediately

The point is whether you can be emotionally appealed to as many people as possible. If you appeal emotionally

In that case, it may not be possible to make an appropriate judgment, or it may be easy for others to dismiss it.

However, the thoughts of each person changed drastically, and I could not put together my thoughts fairly and fairly.

It becomes a very dangerous situation. However, such shock therapy for people

Even if you use it, if you think calmly after that and change your mind from retaining the death penalty to abolishing the death penalty,

That is my desire. Once you're shocked, whiten your head and become yourself

However, if the death penalty is still retained, that's fine. With that kind of preparedness, the death penalty will be abolished this time.

The one who came to the conclusion was one who was mistakenly executed by the death penalty due to misjudgment and ruined his life.

This is to eliminate the day as soon as possible. To the extent that there is a possibility of misjudgment in human trials

The death penalty is an irreparable sentence that cannot be recovered once it is executed.

It should be abolished. The "Death Penalty Abolition Treaty" was adopted by the United Nations in December 1989, and the world

The death penalty is abolished in 139 countries in the field, or an executive stop 10 are (end of 2009), the world

There are active efforts in the world to abolish the death penalty. Also in Japan in 2003,

The Federation of Parliamentarians promoting the abolition of the death penalty publishes the "Bill on Life Imprisonment and Establishment of Death Penalty System Investigation C

It came to be represented 11 . In this way, the movement toward the abolition of the death penalty has emerged as a big swell.

The most important point is to persuade as many people as possible and gain support.

It has become. With the support of many people, it is certain that the death penalty will be abolished.

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