The Nagayama Criteria for Assessing the Death Penalty in Japan: Reflections of a Case Suspect

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Here Daniel Métraux recounts his involvement in the sensational 1969 case of serial killer Nagayama Norio 永山則夫 (1949–97) in Japan and details the resultant “Nagayama criteria,” used by Japanese judges to determine if a case warrants the death penalty.

Capital Punishment in Japan

Capital punishment is as controversial a subject in Japan as it is in many Western countries, but rather than moving to ban the severest of penalties, Japan has chosen not to follow the course set in recent decades by Great Britain, Canada, and even some states in the United States. Between 1945 and 2000, 584 executions took place in Japan; and 54 inmates were on death row in 2000 (Schmetzer 2000). The 1980s and early 1990s witnessed a lull in the number of annual executions, but the pace picked up again in 1997 with the hanging of a number of convicted criminals, including Nagayama Norio 永山則夫 (1949–97). Nagayama admitted to killing four men on a nationwide spree of murders in October and November 1968. The murders triggered a massive manhunt that rounded up over five hundred suspects—myself included.

Details of executions in Japan are hard to come by. Instead of formal confirmation by the Justice Ministry, news of hangings is generally leaked to the news media, or provided by the relatives or lawyers of the persons executed. Government policy is not to announce pending executions or confirm that one has taken place. The Japanese government says it refrains from comment out of deference to the survivors of the crimes and to the families of those put to death. But critics say officials are simply afraid of scrutiny.

Critics of Japan’s policies on executions say that the way convicts are killed is most inhumane. The condemned person himself does not know
that he is going to die until 10 o’clock on the morning of the execution. When the appointed hour comes, he must be hanged, the only form of execution in Japan. Before the event he must sit in a tiny cell in virtual solitary confinement for years on end, often losing his sanity due to not knowing upon waking in the morning whether he is to die or to live for another day.

Supporters of Nagayama, including his lawyers and his former wife, begged for leniency. They claimed that, as he matured into adulthood, he received a good education (via correspondence), married, became a famous novelist, donated the proceeds from his books to the families of his victims, and was an active supporter of various charities. But their protests came to no avail. The Nagayama case did, however, have a very important impact on future cases in Japan, laying out clear criteria—the “Nagayama criteria”—by which judges in Japan to this day sentence criminals.

The Nagayama Case & My Involvement as a Suspect

The morning of Tuesday, February 11, 1969, was cold and snowy in Tokyo. I was living there as a junior-year-abroad student at Waseda University and was sleeping in late because it was National Foundation Day (kenkoku kinenbi 建国記念日), a national holiday. Suddenly, around 11 o’clock, my home-stay mother, Mrs. Endo, came banging on my door: “Daniel, wake up at once! There is a police detective downstairs who wants to talk to you.” I staggered down a short flight of stairs in my pajamas to find an earnest young detective flashing his wooden badge at me. The next hour was one of the most bizarre in my life.

The detective informed me that I was a suspect in one of Japan’s most sensational murder cases. I already knew the facts: Between October 11 and November 5, 1968, some unknown person, presumed to be a young man, had killed four young men. The first murder, on October 11, occurred at the Prince Hotel in Tokyo, where the assailant had fired two shots into the head of guard Nakamura Kiminori during a robbery attempt. A second robbery attempt, on October 14, took the life of guard Kamitsu Tomejiro near Yasaka Shrine in Kyoto, some 480 kilometers from the site of the first incident. The third murder occurred on October 27 in Hakodate, Hokkaido (over 800 kilometers north of Tokyo), where taxi driver Saito Tetsuhiko was found lying in a pool of blood and died soon thereafter. The fourth murder occurred in Nagoya (350 kilometers from Tokyo) on November 5, when another taxi driver, Ito Masaki, was shot during a botched robbery. Police surmised that the robber had netted about ¥16,000 (about US$46 at 1968 exchange rates) during these robberies (Asahi Evening News 1969).

Police were sure that the crimes had been committed by the same person, because all of the bullets had come from the same pistol. That pistol was an American-made gun and was rare in Japan. A pistol of a similar
make had earlier been reported stolen from the home of an American official at Tachikawa Air Force Base, then an American installation several kilometers west of Tokyo. The fact that an American-made gun had been stolen from a secure American base led police to surmise that the killer might be a young American.

The detective summarized these facts to me in a polite but official manner. He also informed me that I was a suspect because I had been staying in a ryokan (Japanese-style inn) very near the site of the Hakodate murder, that my Tokyo home was not that far away from the scene of the Tokyo murder, and that I had traveled to Kyoto near the time of the Yasaka Shrine murder. The detective then asked if I had ever visited the base at Tachikawa, to which I replied in the affirmative. I had gone there several times to buy American food and newspapers with other American students at Waseda. And, yes, my then-fiancée (now wife) Judy Menelly and I had indeed traveled together to Hokkaido during a school break and had gone to Kyoto for a weekend visit in October 1968. And, no, I could not substantiate my whereabouts on October 11, a school day, because I had already sent my notebook home and no attendance was taken at Waseda that day.

The detective asked me not to leave Tokyo until he investigated further and then looked at me with my wild, uncombed hair and red-striped pajamas and shook his head with a grin: “You really don’t look like a murderer.” Two days later he called to say that I was no longer a suspect. He had checked with the ryokan in Hakodate and was informed that Judy and I had been eating breakfast and taking a bath at the hotel at the exact time of the murder. The hotel clerk remembered us well, because very few American tourists came to Hakodate at that time, and we had been among the very first to visit the hotel. A hotel maid had apparently watched our eating breakfast from behind a window because she had never before seen an American couple eating a meal.

Two months later, in early April 1969, we read in the newspaper that a suspect in the four murders had been taken into custody. Nagayama Norio, a bartender in Nakano Ward, the very area where Judy and I were then living, had entered the teacher’s room of the Hitotsubashi School of Business in nearby Shibuya and had fired five shots at a guard before fleeing. When captured a short time later, the police identified the suspect as Nagayama, a native of Itayagi township in the northern prefecture of Aomori. Nagayama quickly confessed to the four earlier killings.

Later at his trial, Nagayama revealed that he had been born into a very poor family in Aomori. His father had died outside along a road shortly after the birth of his son, and his mother had abandoned him in a bleak house when he was only five. Nagayama stayed in Aomori until 1964, when, at fifteen years old, he moved to Tokyo. He changed jobs frequently and lived an unstable life in Tokyo. He witnessed a fierce gun battle in Shibuya in
1965 between police and Katagiri Misao 片桐操, who earlier had shot a Kanagawa policeman dead before being snared in Shibuya. At his own trial, Nagayama tried to defend his actions, saying that they were the inevitable consequence of his “poverty and ignorance” (*Daily Yomiuri* 2009b).

Nagayama received the death penalty in 1979, but two years later the Tokyo High Court commuted Nagayama’s sentence to life in prison, noting the following: “The government should have saved the accused from his poor surroundings. It would be unfair to ignore the lack of proper welfare policies and lay all the responsibility to him” (Hirano 2007). Japan’s Supreme Court reversed the High Court’s decision in 1983. The High Court subsequently sentenced Nagayama to death in 1987, a decision the Supreme Court upheld in 1990. Nagayama was hanged on August 1, 1997.

Few people were surprised with Nagayama’s death sentence. But as the years dragged on, Nagayama became quite famous because of his success as a novelist, after he put himself through college via a correspondence course. In 1971, his first published work, *Muchi no namida* 無知の涙 (Tears of ignorance), became a best seller. In 1983, he was awarded a major Japanese prize for the story *Kibashi* 木橋 (Wooden bridge), subsequently published in a collection under that name in 1984 with three other stories. The Japanese writing community was uneasy with Nagayama’s success, given his status as a convicted killer. He donated the resulting royalties to relatives of his victims as a sign of contrition, though some refused to accept them. He also donated funds to a charity to help poor Peruvian children visit Japan and to help school dropouts in Japan. His lawyer, Kyoko Otani, said at the time of his death: “Mr. Nagayama wanted to save poor children like himself from poverty and ignorance so they could lead decent lives, as he believed that is the best way to create a society without crime” (quoted in Hirano 2002).

**A Controversial Sentence**

Nagayama’s execution brought worldwide attention to the treatment of death row prisoners in Japan. Many writers, both in Japan and abroad, condemned the cruel manner in which people like Nagayama are kept, while others pleaded for Nagayama’s life, saying that he had become a far different person in prison and shown deep contrition for his crimes. Amnesty International (1997) wrote:

> Four people were hanged in secret on 1 August, including the well-known writer Nagayama Norio, who had been in prison for 28 years. The four prisoners, all convicted of murder, appear to have been selected at random from some 55 prisoners whose death sentences had been finalized. As normally happens in Japan, they and their families were given no advance warning of the executions. One of the four was a woman.
Nagayama Norio, then aged 19 and a minor under Japanese law, killed four people in 1968. He was arrested in 1969, tried over the next 10 years and finally sentenced to death in 1979. The Tokyo High Court commuted his sentence to life imprisonment in 1981 but in 1987, following an appeal by prosecutors questioning the reduction in his sentence, Nagayama Norio was again sentenced to death. In 1990 his death sentence was finalized by the Supreme Court. During his time in prison Nagayama Norio wrote two bestselling books. He gave the royalties from his first book to the families of his victims.

Prisoners sentenced to death in Japan are treated in a cruel and inhuman manner. They are generally held in solitary confinement cells where they are forced to sit in the same position all day. They are under constant surveillance by prison guards, are given no opportunity to converse with other prisoners and are denied visitors apart from their immediate family. Many suffer from psychological problems associated with the stress of knowing they may be executed at any time without warning. AI [Amnesty International] has urged the authorities to stop all executions and improve the treatment of prisoners sentenced to death pending abolition in law.

During the last years of his life, Nagayama sought to turn his death sentence into an appeal to the conscience of the people of Japan. From prison, he pleaded for tolerance and sought to win sympathy with his novels and poetry. He won some support among opponents of the death penalty and was even married for a brief time in the early 1980s, but his efforts ultimately failed. Various surveys of the Japanese public over the past two decades have indicated that between 65 to 80 percent of all Japanese adults favor retaining the death penalty. In April 1990, several Japanese newspapers warned that “capital punishment should be imposed carefully but that it was appropriate in this [the Nagayama] case because of what one called ‘the coldbloodedness of the slayings, the motives for the crimes and the great pain suffered by the families of the victims’” (Weisman 1990).

The “Nagayama Criteria” for Assessing the Death Penalty in Japan

The Supreme Court’s decision to overturn the High Court’s sentence of a life term for Nagayama marked the first time since World War II that such a sentence had been rejected. The Nagayama case also brought forth criteria that Japanese courts thenceforth had to use when imposing the death penalty in Japan. These factors were: the nature of the homicide in question; the motivation behind it; the method employed in the killing; the number of people killed; the feelings of the bereaved family toward the culprit; the magnitude of the social implications of the case; the age of the defendant; whether the defendant has a prior criminal record; and whether the defendant has demonstrated any remorse for what he or she has done.

According to a retrospective article about the case in the Daily Yomiuri (2009b), “the Supreme Court said capital punishment should be allowed when such a decision ‘is considered inevitable after taking into consideration all nine of these factors, in a well-balanced manner.’”
The question of the death penalty in Japan is a controversial one, but the criteria delineated by the Nagayama case seem to have set the standards that courts in Japan follow to this day. Akira Toyoshi, who served as associate judge in the District Court proceedings in the Nagayama case—and who supported the death sentence for Nagayama—said during the court sessions he began to see a change in the defendant. He said that Nagayama, who had once been ignorant on many matters, seemed to be attempting to better himself through reading and trying to understand philosophy:

“Honestly speaking, there was more than one occasion [while I was serving] when I was unsure if the defendant should be sentenced to death before I eventually had to decide,” Toyoshi said.

“I think it was a good thing that the Supreme Court outlined its nine-point criteria [on applying the death penalty],” he added. (Daily Yomiuri 2009b)

Itsuo Sonobe was one of the four judges in charge of the Nagayama case for the final proceedings at the Supreme Court that finalized the death sentence for Nagayama. Regarding the top court’s criteria, Sonobe remarked:

“Not all of the factors have equal weight when deciding whether a death sentence is appropriate. The criteria state that ‘particularly high importance should be attached’ to two of the nine factors, namely the method of killing, which has a bearing on the cruelty of the act, and the number of those killed.”

Sonobe added that ever since the clarification, there has been a deep-rooted belief among district and high court judges that, “only in exceptional circumstances can a death sentence be seen as appropriate when only one person has been killed.” (Daily Yomiuri 2009b)

The Nagayama criteria strongly influenced the verdict of a case in early 2009, when the Tokyo District Court imposed a life sentence on Hoshijima Takanori, a 34-year-old man found guilty in the gruesome April 2008 murder of a 23-year-old woman who lived near him in Tokyo. After the murder, Hoshijima dismembered her body in his apartment and flushed some of her body parts down his toilet. The following excerpt from a news story (Daily Yomiuri 2009a) describes the case:

Though prosecutors had demanded the death penalty for Takanori Hoshijima, a former dispatch worker, for murdering Rurika Tojo, who lived two doors down from him on the same floor, the district court concluded that capital punishment would be too severe for his crime.

“His act of murder was certainly malicious, but it cannot be described as an unparalleled atrocity,” presiding judge Kiichi Hirade said. “The defendant regrets his crimes, so the death sentence is too severe.”

Hoshijima will not be eligible for parole for at least 10 years.

The ruling initially touched upon the so-called Nagayama standard set out by the Supreme Court in 1983 regarding capital punishment. The Nagayama standard, named after serial killer Norio Nagayama, who murdered four
people in 1968, is a nine-point set of criteria for determining whether a death sentence should be imposed.

“To impose the death sentence in a case in which one victim was murdered, a significant level of maliciousness should be recognized,” the judge told the court before examining the defendant’s actions.

The ruling seriously criticized the defendant, saying his actions were self-centered and despicable as he treated the victim as if she were an object that could be disposed of.

But the ruling also pointed out the following facts as mitigating factors for the defendant:
– The defendant killed the woman by stabbing her once in the neck rather than through some more persistent, purposeful action.
– He did not sexually assault the victim.
– The murder was not planned.

Prosecutors had focused on Hoshijima’s actions of dismembering the victim’s body and dumping the body parts as a compelling reason for demanding the death sentence.

The ruling said the act was sordid and horrifying as it showed no regard for the victim as a human being and disregarded the bereaved family members’ feelings.

However, the ruling concluded that the court should not overemphasize the way in which Hoshijima disposed of the victim’s remains.

The judge said it would be appropriate to make the defendant pray for the victim for the rest of his life, referring to the fact that he had expressed regret during the trial.

The sentencing of Hoshijima, despite the brutality of his crime and the public outcry that resulted from his ugly deeds, demonstrates the clear limits surrounding the death penalty in Japan. The most notorious criminals on death row in Japan today are the former leaders of the religious sect Aum Shinrikyo, including Asahara Shōkō 麻原彰晃. The sheer brutality of their crimes—including the murder of nearly two dozen innocents—clearly earned them the death penalty, according to the “Nagayama criteria”; but the ugly murder of one young woman did not warrant enough points against the assailant to win him a trip to the hangman’s noose.

The strong support for capital punishment and for justice against brutal assailants guarantees that the death penalty will remain a possible punishment in Japan, but it will be assessed only against the most heinous of killers and will not be rescinded, even if the criminal shows contrition and becomes a better and reformed individual.

Notes

1 Between January 2006 and January 2009, 32 executions were carried out in Japan. As of September 2009, 102 prisoners were on death row in Japan, many of them elderly (BBC News 2009).
2 See also Amnesty International’s Hanging by a Thread (2009), a report that was released as this volume of the SERAS was heading to press.
References


