Will Penal Populism in Japan Decline?:
A Discussion

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Abstract

I intend to play the role of discussant at a session where five papers have been presented and to draw implications from the perspective I presented in Miyazawa (2007a). I revise my thesis about penal populism in Japan slightly using the concept of “leadership from the front” presented by Johnson. However, I still conclude that penal populism in Japan is not likely to decline in the near future.

Key words: penal populism; victim participation; criminal justice in Japan

The Role of This Essay

I intend to play the role of a discussant at a session where five papers have been presented. Since I have argued elsewhere that penal populism has arrived in Japan and it is unlikely to decline in the foreseeable future (Miyazawa 2007a; 2007b), I will illustrate the implication of those papers in Japan.

Penal Populism in Japan

The main points of my argument in Miyazawa (2007a) may be summarized as the following.

(1) I conducted a content analysis of two newspapers with reputations for having the least sensational reporting (Nihon Keizai Shimbun or Nikkei) or for their liberal positions (Asahi Shimbun or Asahi). While the rate of major crimes and the number of homicides were stable, articles with the term genbatsu-ka (increasing the severity of punishment) suddenly started to appear in Japanese newspapers in 1997. The sarin gas attacks and other crimes committed by the AUM Shinrikyo cult in 1993 and 1994 does not appear to have triggered that abrupt change in the public discourse on crime and punishment in Japan. However, the Kobe double murder case committed by a 14-year old boy in 1997 appears to have triggered it. The number of newspaper articles with genbatsu-ka jumped up to a much higher level in 2000. The Yamaguchi mother-daughter murder case committed by an 18-year old boy in 1999, the Okegawa stalker murder case in the same...
year, and most of all, the founding of the National Association of Crime Victims and Surviving Families (NAVS) as a movement organization in January 2000 all appear to have contributed to that change. The number of newspaper articles with genbatsu has remained at a similar level since then, and genbatsu has continued to be the dominant theme in the public discourse on criminal justice policies.

(2) The NAVS has created a qualitative change in the crime victim movement in Japan. The previous movement focused mainly on (a) the criticism of insensitive treatment of victims and their families by police and the media and (b) the improvement of financial, psychological, and medical assistance to victims and their families. The NAVS added demands for (1) death penalty to homicides, (2) a general increase of punishments (including the creation of new crime categories), (3) civil damage awards through criminal proceedings, and (4) direct participation as an active member in criminal proceedings. The professional status of the NAVS head (a former president of one of the largest bar associations) has helped it to obtain a direct access to leading members of the ruling party (the Liberal Democratic Party or LDP), including the Prime Minister. It has directly participated in policy-making in the LDP, in the Diet (Japanese parliament), and even in the Legislative Deliberation Committee of the Justice Ministry which usually consists of government officials, lawyers, and academics. The media has closely followed activities by the NAVS and its members. Thus the NAVS has acquired the position to represent public opinion in policy-making process.

(3) The government and the Diet has responded to the NAVS’ demands by a series of legislations and policies, including the amendment to the Juvenile Law in November 2000, the creation of the crime of dangerous driving resulting in death or injury in November 2001, the wholesale increase of punishments by the amendment to the Criminal Code and the enactment of the Crime Victim Basic Law in December 2004, the adoption of the Basic Plan on Crime Victims in December 2005, and the amendment to the Juvenile Law in May 2007.

(4) The amendment to the Criminal Procedure Code in June 2007 is the pinnacle of the NAVS’ success. The head of the NAVS participated in the deliberation of the amendment to the Criminal Procedure Code in 2007 in Justice Ministry’s Legislative Deliberation Committee. The amendment has given several rights to the crime victim or bereaved family in selected serious crimes such as allowing them to sit alongside the prosecutor in criminal proceedings, to question the defendant, to recommend a sentence, and to question the prosecutor about his handling of the case. The amendment has also introduced a system to award civil damages through criminal proceedings. This amendment will be implemented on December 1, 2008.

(5) The judiciary has also responded to public opinion represented by the NAVS at all levels. The most prominent response is the Supreme Court decision in June 2006 which remanded the high court decision in the Yamaguchi mother-daughter case which had upheld the indefinite imprisonment given by the district court. The remanded high court has duly sentenced the defendant to death in April 2008.

(6) This situation means that penal populism has arrived in Japan. A particular group of victim movement represents public opinion, and politicians quickly respond to public opinion as such.
A group of scholars and lawyers supporting such policies has been formed, and the judiciary also follows the trend.

(7) Penal populism in Japan is unlikely to decline in the foreseeable future. Some western scholars suggest that penal populism may decline once experts regain the confidence in the public. In Japan, only those scholars, lawyers, and government officials who support the punitive victim movement are likely to gain confidence of the public, and this policy will not change. Furthermore, recent legislation and policies have given more power to police, prosecutors, and mainstream judges. They are unlikely to relinquish their increased power of investigation and punishment. Other western scholars suggest that once the criminal justice budget and prison overcrowding reached an excessive level, punitive policies may be reexamined and pushed back. But such a scenario is also unlikely in Japan. Penal populism in Japan has risen in spite of the low and stable crime rate. While the prisons for convicted offenders are exceeding their capacity by 15 percent in 2006 (Homusho Homu Sogo Kenkyujo 2007: 58), the absolute level of prison population in Japan in 2007 is still only 63 per 100,000 inhabitants, which is lower than the imprisonment rate in Scandinavian countries in 2007 (Table I.3 of Tapio Lappi-Seppälä’s paper in this issue). It will take a long time before reaching an excessive level like those in Anglo-American countries (Table I.1 of Tapio Lappi-Seppälä’s paper in this issue). Even a change in the ruling party is unlikely to change the punitive trend: the Liberal Party, the largest opposition party trying hard to unseat the LDP, has also supported recent legislation.

The trend summarized above has continued, which is demonstrated by the Juvenile Law amendment in June 2008, as well as the NAVS head being a member of the Legislative Deliberation Committee for this amendment.

The NAVS’ role as an overseer of criminal justice has expanded to the media. Asahi newspaper’s evening edition has a satirical column with 14 lines. Since then Justice Minister Kunio Hatoyama signed execution orders every two months (13 in a total in his term of nine months) at a much higher pace than previous ministers, the column on June 18, 2008 called him the “God of Death” (shinigami), while it called a shogi (Japanese chess) champion the “God of Shogi”, and a government bureaucrat involved in bid riggings the “God of Plague” (yakubyo). Asahi was immediately flooded with emails and faxes defending the Minister, and other papers and magazines published articles bashing Asahi. On June 25, 2008, the NAVS sent a letter to Asahi, demanding an explanation. They protested that the Minister was simply executing his duty and that the column was virtually characterizing bereaved families of crime victims longing for a speedier execution as the God of Death by implication. The NAVS rejected earlier responses from Asahi as insufficient. It finally accepted an apology on August 1, 2008 after its third letter which said that “the writer can do nothing other than be ashamed by his ignorance” and “we fully understand the feeling of bereaved families who seek the death penalty for the defendant of a heinous crime or the execution of the death row inmate whose conviction has been finalized” (Asahi, August 2, 2008, morning, p.33).

Table 1 of Miyazawa (2007a) is reproduced in Appendix of this essay in an updated, revised, and expanded form. I added data on the number of finalized death penalties. It seems clear that
penal populism is now firmly established in Japan. There appears to be no likelihood of its decline in the near future. I will comment on the five papers in this issue from this viewpoint.

Tapio Lappi-Seppälä, Michael Tonry, and John Pratt

Lappi-Seppälä mainly discusses differences among European countries, while Tonry focuses on the United States. I believe that Lappi-Seppälä is presenting a general analytical scheme which can be applied to the United States.

Lappi-Seppälä explains differences among European countries in terms of differences in factors such as (1) income equality and social expenditure, (2) trust in the legal system and trust in people, and (3) consensus orientation and corporatism in politics. Lappi-Seppälä shows that countries with higher values in these factors (e.g., Scandinavian countries) have lower imprisonment rates, while countries with lower values in these factors (e.g., the United Kingdom) have higher imprisonment rates. The United States may be placed in this general analytical scheme beyond the United Kingdom as a country with extremely low values in these factors. However, it seems also true that these common factors cannot fully explain the extremely high imprisonment rate of the United States in spite of its declining crime rate. Tonry contributes here by emphasizing additional factors unique to the United States such as the moralistic distinction of good and bad associated with the fundamentalist religious right and the history of race relations.

Lappi-Seppälä’s analytical scheme may also be applied to the increasing punitiveness in Japan. It is clear that income inequality has been rapidly expanding (Tachibanaki 2005) and welfare programs have been reduced under neo-liberal policies, while politicians may have become more responsive to public opinions since the introduction of single-seat districts in 1996 in the election of the lower house of the Diet, which is more powerful than the upper house. With regard to the decline of public trust in the legal system and in people, we may consider the significance of the concept of taikan chian or the level of subjective perception of public security. The public has used this concept in its discourse on crime and criminal justice policies since 1995 (Miyazawa 2007a: 69-70). Taikan chian is always worsening irrespective of official crime statistics: while most people have never experienced crime, many people nevertheless believe that the crime rate is worsening, and the society is becoming more dangerous. While the absolute level of imprisonment rate is still lower than those of Scandinavian countries, the recent change in imprisonment rate is higher than that of the United Kingdom (Table 1 and Table 2 of David T. Johnson’s paper in this issue). Since Japan does not have anything like the fundamentalist religious right or the race relations in the United States, it may be easier to place Japan in Lappi-Seppälä’s general analytical scheme.

However, Japan seems to raise some questions to Lappi-Seppälä’s argument about the impact of judicial structure and culture.

(1) Lappi-Seppälä argues that judges and prosecutors in countries where they are not politically appointed are less likely to be influenced by populism than those in countries where they are elected. However, while judges and prosecutors in Japan are not politically appointed, they have
nonetheless been influenced by populism.

(2) Lappi-Seppälä argues that the criminal codes in Scandinavian countries have broad terms which give judges wide discretion in sentencing and that the independence of career judges makes them less vulnerable to political intervention. The Japanese judiciary enjoys a very high degree of institutional independence from other branches of the government. For instance, the Cabinet appoints judges from the list of candidates prepared by the General Secretariat of the Supreme Court without any involvement from the legislature. Yet, individual judges do not enjoy much independence in judicial decision-making since they are rewarded or punished by the General Secretariat of the Supreme Court through relocation, promotion, and pay raise according to their judicial behavior (Miyazawa 1991; Ramseyer and Rasmusen 2003). While the ongoing judicial reform has slightly reduced the power of the General Secretariat in judicial appointment and judicial evaluation, the basic structure still remains the same (Miyazawa 2007c: 86-87). Furthermore, since decisions which do not comply with Supreme Court decisions are highly likely to be overturned by higher courts, the range of judicial decisions by lower courts is highly restricted. Therefore, when the Supreme Court takes a populist position, most lower court judges will follow.

(3) Lappi-Seppälä argues that civil damage awards through criminal proceedings may mitigate demands for harsher punishments. However, the NAVS in Japan does not appear to be considering reducing its demand for death penalty in homicide cases in return for its success to introduce a similar civil compensation system into criminal proceedings in Japan.

(4) Lappi-Seppälä argues that countries with trained professional judges and with criminology included in the law faculty curriculum may have judges and prosecutors with broader and deeper understanding of crime and criminal policy. An implication may be that they are less likely to be influenced by populism. Japanese judges are trained professionals, and criminology is usually part of law faculty curriculum. Yet, Japanese judges are influenced by populism. Since criminology is not part of the bar exam in Japan, there may be no meaningful incentive for prospective judges to take criminology. Taking a criminology course may not have any impact if the course does not require any more than reading White Paper on Crime, which lacks much empirical and critical content.

In short, Lappi-Seppälä seems to be too confident about the impact of the judiciary as a career bureaucracy in shielding itself from penal populism. Bureaucracy may make it easier to turn the entire judiciary to penal populism once the Supreme Court and central bureaucrats in the judiciary decide to do so.

The third paper on western countries is written by John Pratt and is essentially a summary of his book in 2007 (Pratt 2007). I drew from his concept of penal populism in my earlier papers (Miyazawa 2007a; 2007b).

Pratt makes two arguments. One of his arguments is that penal populism is not inevitable. Canada is his example, and Canada also appears to fit Lappi-Seppälä’s general analytical scheme. Critical view about her neighbor, the United States, seems to be a unique additional factor.

Pratt’s second argument is that penal populism can have limits and may be challenged. His
example is the recent development in his own country of New Zealand. He reports that the rising cost of imprisonment which takes resources away from other policy areas, damage to the county's international reputation, and authoritative reports about deplorable prison conditions have helped realign opposition to penal populism. Thus the New Zealand government has turned back from populist influences and has turned towards the criminal justice establishment. Pratt is careful to note that the forces which produced penal populism still exist and the future of penal policy in New Zealand is still to be seen. Still his main point is clear: penal populism can have limits if it creates problems on its own. I have already discussed the situation in Japan in this regard: imprisonment is not likely to reach an excessive level in the near future although it is rising and criminal justice agencies are unlikely to relinquish newly acquired power under penal populism.

David T. Johnson and Koichi Hamai

Johnson and Hamai analyze the situation in Japan. While they appear to agree with me on the fundamental fact that criminal justice is increasingly becoming more punitive, they also present arguments which may require some changes in my own explanations.

Johnson expresses his skepticism about the explanatory power of the concept of penal populism, particularly with regard to death penalty. He tells us that in Asia, some countries are aggressively executing in spite of the lack of penal populism, while other countries are reducing or refraining from execution in spite of their penal populism regarding imprisonment. I believe that the first group is easy to explain: the government may adopt a harsher policy for its own need irrespective of public opinion, particularly in less democratic or non-democratic countries such as China, Vietnam, North Korea, and Singapore. The second group is more interesting. Why have policy-making elites in countries such as the Philippines, Thailand, Cambodia, Taiwan, Pakistan, and Indonesia adopted their positions to death penalty?

Johnson presents “leadership from the front” as the key to explain differences between the second group of Asian countries and Japan. Johnson argues that “it is political leaders who have largely determined how many executions there will be - and more fundamentally, whether capital punishment will exist at all - not public opinion or popular demand.” He uses South Korea as a prime example of the countries where “capital punishment has been fundamentally re-framed as a human rights issue rather than as a question of criminal justice or crime control policy” by policy-making elites, so that they have decided to reduce or refrain from execution in spite of public support for the death penalty.

Johnson then presents two possible scenarios for Japan. One possibility is that Japanese elites will recognize the death penalty as a human rights issue out of their desire to obtain a respectable place in the international environment as their predecessors did in modernizing Japan after the Meiji restoration. The other possibility is that Japanese elites will stick to their present position out of their aversion to “the universalistic claims of other civilizations” as exemplified by their present policy on whaling.

The idea that Japan has a culture of conformity with the West (Feldman 2006) may support
the first scenario. But, unlike Meiji leaders, present Japanese elites are likely to think that Japan already enjoys a respectable place in the international community and there is no need to change her policy about the death penalty. After all, as Johnson correctly mentions, the United States is far ahead of Japan as a developed country that utilizes the death penalty.

Whatever they think now, whether or not Japanese elites will change their position on death penalty and will take “leadership from the front” to reduce or abolish death penalty will depend much on the success of the social movement of domestic reformers who oppose the death penalty and penal populism (Miyazawa 2006). Domestic reformers will have to (1) find and seize a political opportunity that gives them access to the policy-making process, (2) mobilize members, expertise, media, and other resources in order to form, sustain, and grow movement organizations, and (3) frame their proposals in ways that effectively mobilize potential adherents and constituents, garner bystanders, and demoralize antagonists. Under the present penal populism, only those scholars, lawyers, and practitioners who support or accommodate the NAVS’ demands have access to the policy-making process, so there seems to be no political opportunity for opponents right now. I have no idea how opponents can change their political opportunity in the near future. Like Pratt suggests, most likely, they will have to wait until a “scandal” breaks out as a result of excessive penal populism.

While Johnson presents the concept of “leadership from the front” mainly in his discussion about the prospect of the death penalty in Japan, I believe that it is applicable to the increasing penal populism in general. This is applicable because we have to explain why Japanese elites such as LDP politicians, executive officials of the Justice Ministry and National Police Agency, and mainstream judges suddenly started to rush toward harsher penalties around 1999 and 2000.

In this regard, I would like to mention Toshiro Maeda’s paper on factors discriminating death penalty and indefinite imprisonment (with parole) (Maeda 1983). Maeda conducted a kind of discriminant analysis of 136 cases between 1968 and 1978 where the prosecutor demanded the death penalty and the death penalty or indefinite imprisonment was finalized. 58 cases ended with the death penalty, while 78 cases ended with indefinite imprisonment. Maeda found that the year of finalizing was the second most significant factor, only being lower than the type of homicide, but being more significant than the number of victims. The likelihood of the death penalty declined from 1968-1970 to 1971-1972, from 1971-72 to 1973-1974, and from 1973-1974 to 1975-1976 simply by virtue of the year. Since other factors were controlled, we have to interpret this result to mean that judicial attitudes continued to become less favorable to the death penalty at least during this period. It seems safe to assume that judicial attitudes toward the death penalty hit their lowest point sometime after this period and remained there, so that the death penalty was rarely handed down until the recent rise of penal populism. It is also safe to assume that a majority of Japanese people supported the death penalty throughout this period. In short, judges were allowed to exercise their discretion according to their own internal standards, and the public along with politicians did not show much interest. The only exception may have been prosecutors who demanded the death penalty in all the cases analyzed by Maeda which ended in indefinite imprisonment.
I believe that the same scenario may apply to indefinite imprisonment. The number of finalized indefinite imprisonment was 32 in 1997, which gradually rose to 82 in 2002, then jumped up to 117 in 2003, and further increased to 135 in 2006, while the total number of finalized cases declined from nearly 1.1 million in 1997 to less than 740 thousand in 2006 (Homusho Homu Sogo Kenkyujo 2007: 51). This means that judicial attitudes about severity of punishment in general started to become harsher around 2000.

So my question is: who took “leadership from the front” in this sudden change of penal policies? If such leadership did appear, could that leadership appear without public demands represented by the NAVS?

Hamai’s paper comes in here. His main point is that while prosecutors appear to have been pushed by public opinion represented by the NAVS, they may actually have held an inclination toward harsher penalties since before the appearance of the victim movement. They may have simply taken advantage of the appearance of victim movement, so are unlikely to relinquish their newly acquired power.

This seems to be a very likely scenario, given the fact that in all the cases analyzed by Maeda, the prosecutors demanded death penalty. While the victim movement certainly created a political opportunity for prosecutors seeking harsher penalties, prosecutors may have provided “leadership from the front” toward actual legislation.

In Japan, the prosecutor requests the sentence at the conclusion of the trial. The judge hands down a sentence which is usually slightly less severe than the requested sentence; the prosecutor may appeal the acquittal or unsatisfactory sentence, and the high courts are likely to overturn a majority of acquittals or increase the severity of punishment in more than half of the appealed cases (Johnson 2002: 62-63). Given this structure, the increasingly punitive change in judicial decisions regarding death penalty and indefinite imprisonment may have been led by increasing harshness of requested sentences. The pinnacle of such influence of prosecutors on judges was the Supreme Court decision in 2006 which remanded the indefinite imprisonment sentence of a juvenile defendant to the high court with an expectation for the death penalty.

Essentially the same process may have existed regarding amendments of the Criminal Code and the Juvenile Law. Regarding the Criminal Code, the Legislative Deliberation Committee of the Justice Ministry drafted a comprehensive amendment of the Code in 1974. Regarding the Juvenile Law, the Justice Ministry submitted a proposal to the Legislative Deliberation Committee in 1970 in order to introduce the prosecutor into juvenile hearings. The Justice Ministry failed to legislate those amendments under strong criticisms, particularly from the academia and the bar. The highly punitive victim movement may have finally created a political opportunity for the Justice Ministry to amend the Code and the Law. Although the exact contents of the amendments are not the same as the old proposals, it is nonetheless clear that prosecutors have obtained more opportunities to seek harsher penalties to both adults and juveniles.

However, prosecutors or the Justice Ministry seem to have shown some resistance when the basic structure of criminal law or their own control over the process would be affected. Some instances of such resistance have been reported.
(1) In 2000, the NAVS head was invited by an LDP politician, who was a member of the same bar association as the head, to a meeting of LDP's Judicial System Research Committee to present his request to introduce a system to award civil damages through criminal proceedings. The head of the Criminal Legislation Department of the Justice Ministry reacted negatively, mentioning various structural and doctrinal differences between criminal and civil proceedings. Then, the politician who invited the NAVS head questioned the department head why he could not take a positive stance (maemuki no shisei) (Higashi 2006: 90-92). Ultimately, the Justice Ministry presented a proposal to the Legislative Deliberation Committee. The NAVS head was invited as its member, and the proposed system was introduced by the amendment to the Criminal Procedure Code in 2007, along with a system to allow the victim or bereaved family to sit with the prosecutor, question the defendant, and recommend a sentence at the trial.

(2) At a committee meeting in the upper house of the Diet in 2000, a Diet member read a part of the book written by the bereaved family of the two infant girls who had died in a car hit by a truck driven by a drunken driver. The upper limit of the penalty for professional negligence resulting in death or injury was five years, and the driver had been sentenced to four years. The Diet member argued for the need for genbatsuka of serious traffic accidents. The Justice Minister responded that it would require a careful examination, apparently based on the response prepared by Justice Ministry officials (Yomiuri Shimbun Seijibu 2003: 92-93). Justice Minister's response was understandable because traditional criminal law doctrines require that punishments for negligent crimes are lighter than those for intentional crimes. Then, the Prime Minister intervened and responded that he felt like scratching through the sole of one's shoe to the way lawyers think calmly and promised that the government would tackle with this problem so that sufficient measures would be taken as soon as possible. The Diet passed the amendment to the Criminal Code which introduced the new crime of dangerous driving resulting in death or injury which is punishable for up to 15 years.

(3) The Cabinet established the Crime Victim Measures Promotion Conference under itself in April 2005, pursuant to the Crime Victim Basic Law enacted in 2004. A subcommittee was established under it to discuss details. The NAVS head was appointed as its member, while a member from the Justice Ministry was the same prosecutor who had reacted negatively to the request to introduce a system of awarding civil damages into criminal proceedings in 2000 at an LDP meeting described in section (1) above. Both the Criminal Legislation Department of the Justice Ministry and the Japan Federation of Bar Associations (JFBA) opposed the proposal to allow the victim to actively participate in criminal proceedings along with the prosecutor, while the National Police Agency responded negatively to the proposal to raise the amount of national compensation to crime victims to the level provided by the mandatory insurance system. However, the Minister for Crime Victim Measures scolded hesitating government officials, and the NAVS head presented supporting letters from 105 local governments. Ultimately, in December 2005, the Cabinet adopted the Basic Plan on Crime Victims, which included the provisions to introduce a system of awarding civil damages through criminal proceedings and a system to allow direct participation of the crime victim or bereaved family in criminal proceedings within two
years. Thus, the Justice Ministry and other government agencies were bound by this Plan (Higashi 2006: 287-312). In the meantime, the LDP politician who had first introduced the NAVS to the LDP became the Justice Minister in the fall of 2005.

Therefore, the Justice Ministry and executive prosecutors appear to have only grudgingly accepted demands from the NAVS under strong pressure from LDP politicians at or near the top of the government. It may be the case that front-line prosecutors welcome direct participation of the crime victim or bereaved family because they will increase pressures on judges for a harsher penalty. Such pressures may have a stronger influence particularly after the introduction in May 2009 of the new form of trial comprised of a panel of three judges and six lay people (Miyazawa 2007c: 75-76). However, it seems at least safe to conclude that the two new systems, which will soon be introduced into criminal proceedings, are not what the Justice Ministry or prosecutors wanted.

Therefore, my thesis appears to require some fine tuning. As long as the Justice Ministry or prosecutors are concerned, we should distinguish (1) simple increases in punishments from (2) fundamental changes in criminal law legislation and criminal proceedings. The Justice Ministry or prosecutors may be considered to have taken “leadership from the front” with regard to (1).

Turning to politicians, it must be clear by now that some LDP politicians have actively played an important role in introducing the NAVS to the LDP and the Prime Ministers, and pushing or persuading reluctant ministries and government official to accept the NAVS’ demands. One of the most prominent politicians was a Justice Minister who was a former judge and an attorney, and another prominent politician was an attorney who also became the Justice Minister at the height of legislation for victims. The enactments of the Crime Victim Basic Law and later legislation were closely controlled by those politicians. When the Criminal Procedure Code was amended in June 2007, the NAVS’ head wrote in its website that the series of legislation to protect the dignity of victims since the Crime Victim Basic Law was “led by politics (seiji shudo)” under the strong leadership of Prime Ministers Jun’ichiro Koizumi and Shinzo Abe and that particularly the amendment to the Criminal Code was completed under the strong will of the ruling parties (LDP and its coalition partner, the Clean Government Party or Komeito). He expressed a deep appreciation (http://www.navs.jp/2007_6_20.html, visited on June 26, 2007). This is an almost literal example of penal populism in action. Those politicians have clearly taken “leadership from the front” to adopt penal populism.

Seen from a broader perspective on Japanese politics, this process of legislation dominated by LDP politicians may be seen as an example of the general pattern of the ascending position of politicians over that of bureaucrats. The legislative process until the 1970s was dominated by bureaucrats who had more expertise and experience in the respected areas than politicians. But many retired bureaucrats joined the LDP, and many longer-serving LDP politicians eventually developed sufficient level of expertise to assert their official position as legislators by the 1980s. Such politicians formed groups in their respective fields of expertise and were called zoku or tribes (Abe, Shindo, and Kawato 1994: 24-25, 48-49), and such tribe politicians became major members of LDP’s Policy Affairs Research Council (PARC) which had the power to grant or deny
LDP’s ascent to proposed legislations before they are sent to the Cabinet.

The Judicial System Research Committee is one of PARC’s subcommittees. Such tribe politicians appeared first in economic policy areas, while criminal justice legislations continued to be controlled by the Justice Ministry which negotiated with the Supreme Court and the JFBA. However, such a monopoly of policy-making on issues related to the justice system by the Justice Ministry was lost when the Justice System Reform Council (JSRC) was established directly under the Cabinet in 1999 to 2001 (Miyazawa 2007c: 54-61). LDP’s Judicial System Research Committee actively intervened in the deliberation from the side. Members of the Committee were called shiho zoku or judicial tribe. While bureaucrats of the Justice Ministry eventually regained control over implementation of legislation pursuant to the final report of the JSRC (Miyazawa 2007c: 61-69), the Judicial System Research Committee has remained in its position as the most important forum to make political decisions on justice-related issues where officials from the Justice Ministry and other related government agencies are called to explain their proposals.

The single-seat electoral system introduced in 1996 may have made politicians more responsive to public opinion under the increasingly closer competition with opposition parties. While politicians did not show much interest in criminal justice until the late 1990s, the NAVS triggered their interest. Judicial tribe politicians have taken “leadership from the front” toward penal populism, particularly on proposals which the Justice Ministry hesitated to accept.

Conclusion

Will penal populism in Japan decline in the foreseeable future? No.

The NAVS is likely to continue to maintain its status as the sole representative of public opinion. Police, prosecutors, and conservative judges will enjoy their newly expanded power of investigation, prosecution, and punishment. The Justice Ministry will continue to take “leadership from the front” as far as harsher penalties are concerned, while LDP’s judicial tribe politicians will continue to take “leadership from the front” toward penal populism on more system-related issues. Any change in the ruling party is not likely to change this situation much. For instance, both the Juvenile Law amendment in 2000 and the Criminal Procedure Code amendment in 2007 were supported not only by LDP and its coalition partner, but also by some opposition parties including the Democratic Party which otherwise wants to topple the LDP government. On the other hand, given the present state of political opportunity, people opposing penal populism are not likely to find a way to form a successful counter movement in the near future.
### Appendix: Revised, Updated, and Expanded Table 1 in Miyazawa (2007a)

<table>
<thead>
<tr>
<th>Year</th>
<th>Major Crimes Per 100 Thousand</th>
<th>Recorded Crimes</th>
<th>Finalized Death Penalties</th>
<th>No. of Newspaper Articles with Gen-batsuka</th>
<th>Major Events Discussed in Miyazawa (2007) and This Essay</th>
</tr>
</thead>
<tbody>
<tr>
<td>1974</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>*Bombing of the headquarters of the Mitsubishi Heavy Industries. *</td>
</tr>
<tr>
<td>1981</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>*The Crime Victims Payment Law was enacted. *</td>
</tr>
<tr>
<td>1990</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><em>The Japanese Association of Victimology was established.</em></td>
</tr>
<tr>
<td>1992</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><em>A crime victim counseling office was opened at the Tokyo University of Medicine and Dentistry.</em></td>
</tr>
<tr>
<td>1993</td>
<td>1,442</td>
<td>1,272</td>
<td>7</td>
<td>0</td>
<td><em>Sarin gas attack in Matsumoto.</em></td>
</tr>
<tr>
<td>1994</td>
<td>1,425</td>
<td>1,321</td>
<td>3</td>
<td>0</td>
<td><em>Sarin gas attack in Tokyo.</em></td>
</tr>
<tr>
<td>1995</td>
<td>1,420</td>
<td>1,312</td>
<td>3</td>
<td>0</td>
<td><em>July: Kobe double murder case committed by a 14-year-old boy.</em></td>
</tr>
<tr>
<td>1996</td>
<td>1,440</td>
<td>1,257</td>
<td>3</td>
<td>0</td>
<td><em>May: The National Network for Victim Support was established.</em></td>
</tr>
<tr>
<td>1997</td>
<td>1,506</td>
<td>1,323</td>
<td>4</td>
<td>4</td>
<td><em>December: The Justice Ministry and the LDP decided to amend the Juvenile Law to reduce the age limit to try a juvenile in an adult court, etc.</em></td>
</tr>
<tr>
<td>1998</td>
<td>1,608</td>
<td>1,466</td>
<td>7</td>
<td>9</td>
<td><em>April: Yamaguchi mother-daughter murder case committed by an 18-year-old boy.</em></td>
</tr>
<tr>
<td>1999</td>
<td>1,710</td>
<td>1,338</td>
<td>4</td>
<td>2</td>
<td><em>October: Okegawa college woman stalking murder case.</em></td>
</tr>
<tr>
<td>2000</td>
<td>1,925</td>
<td>1,462</td>
<td>6</td>
<td>44</td>
<td><em>January: The National Association of Crime Victims and Surviving Families (NAVS) was established and its first symposium was held. LDP politicians expressed support.</em></td>
</tr>
<tr>
<td>2001</td>
<td>2,149</td>
<td>1,436</td>
<td>5</td>
<td>27</td>
<td><em>March: The district court in the Yamaguchi mother-daughter murder case sentenced the defendant to indefinite imprisonment.</em></td>
</tr>
<tr>
<td>2002</td>
<td>2,240</td>
<td>1,489</td>
<td>3</td>
<td>12</td>
<td><em>May: The Diet passed the Two Laws for Crime Victim Protection.</em></td>
</tr>
<tr>
<td>2003</td>
<td>2,187</td>
<td>1,530</td>
<td>2</td>
<td>15</td>
<td><em>October: The NHK aired a program to support the NAVS.</em></td>
</tr>
<tr>
<td>2004</td>
<td>2,007</td>
<td>1,508</td>
<td>15</td>
<td>19</td>
<td><em>November: Juvenile Law was amended to reduce the age limit to try in an adult court, etc.</em></td>
</tr>
</tbody>
</table>

*Will Penal Populism in Japan Decline?: A Discussion*
on many issues. NAVS leaders met the Prime Minister.
*August: The Justice Ministry decided to amend the Juvenile Law to reduce the age limit to commit a juvenile to a juvenile correctional center, etc.
*November: Nara girl murder case.
*December: The Diet passed the bill to amend the Criminal Law to generally increase punishments.
*December: The Diet passed the Crime Victim Basic Law.
*April: The government established a committee on a Basic Plan on Crime Victims, and the NAVS presidents became a member.
*June: The Diet started to examine the bill to amend the Juvenile Law.
*September: The Justice Ministry decided to add fines to minor offenses in order to reduce suspended sentence.
*November: Hiroshima girl murder case.
*December: The Cabinet adopted the Basic Plan on Crime Victims.

2005 1,776 1,458 11 11 71

2006 1,309 20 46 371

2007 50 242

2008  

Notes:
1. Criminal coded offenses, except traffic-related negligent offenses.
2. Homicides, and robberies with homicide, including attempted offenses.
3. Death penalties finalized by exhausting appeals or by lack of appeals.
4. Articles unrelated to crimes in Japan are excluded.

Sources:

References


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日本のポピュリズム刑事政策は後退するか：
討論者として

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本稿は、５本の報告が行われた部会での討論者の役割を意図したものであり、著者が Miyazawa（2007s）で提示した視点からインプリケーションを検討するものである。著者は、David Johnson が提起する「前線からのリーダーシップ」という概念に基づいて自己の主張を部分的に修正する。しかし、結論では、日本のポピュリズム刑事政策が近い将来に後退する見込みはないと主張する。

キーワード：ポピュリズム刑事政策、被害者参加、日本の刑事司法