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"Why I Support Executions"

An interview with Justice Minister Hatoyama Kunio

Translation and Commentary by Michael H. Fox

Hatoyama Kunio, current Justice Minister of Japan, is one of Japan's most candid politicians. He has a penchant for speaking his mind, and startling the public, his party and even his ministry. In the wide ranging interview below, originally published in the weekly magazine Weekly Asahi (Shukan Asahi) on October 26, he sounds off on a number of timely and important issues regarding Japan's justice system, particularly the death penalty, and upcoming changes to the socio-legal structure.

Hatoyama Kunio

Hatoyama was born into a political dynasty. His father Seiichiro served in the Diet and was a Minister of Foreign Affairs. His grandfather Hatoyama Ichiro was Prime Minister from December 1954 to December 1956. And his great-grandfather Kazuo, served in the Diet and was president of Waseda University. His elder brother Yukio, is a Diet member and a leader of the opposition Minshuto (Democratic Party of Japan). According to his website, Hatoyama declared that he would enter politics when he was in the second year of elementary school. His wish started to materialize when he became a secretary to Prime Minister Tanaka Kakuei after graduating from Tokyo University's Department of Law in 1972.

Hatoyama has had a long political career. Elected to the Diet in 1976, he has served as Education Minister and Labor Minister. He left the LDP in 1996, and was elected to the Diet as a Minshuto candidate. Three years later, he abandoned the party and resigned his seat in the Diet. He ran unsuccessfully for Governor of Tokyo in 1999. Soon after, he returned to the LDP and won a seat in the diet in 2000 under the system of proportional representation. He became Minister of Justice under previous Prime Minister Abe Shinzo in August of 2007, and continued in the post in the present cabinet of Prime Minister Fukuda Yasuo. At what turned out to be the last press conference for the Abe cabinet, he suggested that "executions should be carried out automatically without involving the Minister of Justice."

The comment sent shock waves through the country. The last step in the long process of trying, sentencing and finally executing a convicted criminal is the signature of the minister of justice. Once signed, the execution of a death warrant must be carried out within five days. The justice minister's involvement in the process is so critical that several of Hatoyama's predecessors refused to carry out executions.

As a result of his reluctance to sign death warrants and a desire to continue executions, Hatoyama was widely criticized. Kamei Shizuka, a former director of the National Police Agency and LDP bigwig, now represents The People's New Party in the diet. He was progenitor of the non-partisan Parliamentary League for the Abolition of the Death Penalty. Hosaka Nobuto, a member of the Social Democratic Party, is one of the country's most progressive politicians and an outspoken opponent of the death penalty.

In addition to the death penalty, Hatoyama has voiced opinions on other areas of the criminal justice system, including the upcoming quasi-jury system for major criminal trials scheduled to begin in May 2009. Suspects charged with committing crimes that carry a sentence of three years or more will have the right to a jury composed of three sitting judges and six citizens. While supporting the quasi-jury system, in this interview he attacks the policy of increasing the number of attorneys in Japan's severely under-lawyered society. Currently, approximately 1,200 people, or roughly two percent of candidates pass the National Bar Exam and begin careers as lawyers, prosecutors, or judges. This number is scheduled to grow to 3,000 in the near future as the first crop of students graduate from newly established law schools.

Also mentioned in the interview is the Toyama Rape Case, a now infamous miscarriage of justice. In 2002, a man was wrongly convicted of rape and attempted rape in Toyama Prefecture and served twenty-five months in prison before being exonerated this year when the real culprit confessed. The conviction was based on a coerced confession and the suppression of exculpatory evidence. This case has galvanized public opinion and stimulated the need for greater transparency in police investigations, especially the filming of interrogations.

Hatoyama suggests that executions should be carried out automatically after an objective examination by a third party who will "review the transcripts." However, no such system has ever been proposed or even discussed in Japan. The idea of an objective third party seems to be a face-saving measure designed to deflect the storm of criticism that followed Hatoyama's comments. He also suggests that executions should only be carried out after retrial requests and petitions for amnesty have been exhausted. The Japanese Code of Criminal Procedure does not limit retrial requests -- Sakae Menda, the first Japanese man freed from death row – went through six retrials. Likewise, the mention of amnesties is irrelevant: none have been granted since the mid 1970's.

Sakae Menda

Other Hatoyama comments are puzzling. He mentions that "some countries do not even have laws banning jeopardy" as if to infer that Japan is superior in this respect. Though Article 39 of the constitution prohibits double jeopardy, the prosecution in Japan may appeal any verdict, and almost always appeals innocent verdicts and sentences considered too light. Likewise, his statement that "in Japan there is a right to silence, but in England, if you keep silent, this means you acknowledge guilt." In fact the complete opposite is true. Silence in Japan is considered an acknowledgement of guilt.

Hatoyama's preference for reducing the number of lawyers is reactionary and contrary to his ministry's policy. The increase occurred after a long process of judicial policy making involving the Japan Federation of Bar Associations, the Ministry of Justice, the Ministry of Education (which has set up law schools) and Parliament. All agreed that Japan has far too few lawyers, and is ill equipped for dealing with the complexities of International business law.

Hatoyama, like many of his LDP colleagues, has capitalized on the mostly docile electorate. An increase in lawyers, despite the pressing need, will certainly agitate this mind set. His comment about lawyers being unable to find work in contemporary Japan is completely askew from reality. His opinions indicate a deep mistrust of empowering the public and independent legal policy, and strong support for top-down decision making and bureaucratic control.

Just over a month after this interview was originally published, Hatoyama demonstrated his resolve to execute: three convicts, two in Tokyo and one in Osaka, were hung on December 7. Hatoyama's imprint on the process was clear. In a clear break with previous policy, the ministry openly announced the names of the executed, and the crimes leading to conviction. From 1998, the ministry only announced the number of executions, omitting all other details. Before 1998, there were not even any announcements. In both cases the names of the executed were revealed only to attorneys and designated guarantors of the accused. These parties were charged with directly informing the press, or informing the public indirectly through the offices of Amnesty International.

The dramatic increase in executions --thirteen-- over the last 12 months signifies a departure from policy. Double digit hangings in such a span have not occurred since 1975.

The flurry has generated a shock-wave of concern in a society trying to grapple with a rapidly ageing population: three of those executed have been over age 70. Akiyama Yoshimitsu, one of four convicts hung on Christmas Day 2006, became the oldest person executed in post-war Japan. Aged 77 and quite infirm, he was transported to the gallows in a wheel chair. Ikemoto Noboru, executed in Osaka on December 7th, was hung two weeks before his 75th birthday. Originally sentenced to life imprisonment, his sentence was raised to death upon appeal. Had the government allowed the original sentence to stand, Ikemoto would most likely have been paroled in 2006, eighteen years into his sentence.

Interview begins:

Interviewer: At the September 25th press conference, the last for the Abe Cabinet, your comments about the death penalty created quite a stir?

Hatoyama: I was misunderstood and my true thoughts were not illustrated. Today, I want to make my points clearly. Chief Cabinet Secretary Machimura (Nobutaka) said my remarks were sudden and off the cuff, but this is not true. Some of this is my fault, but some is due to the chief of the abolitionist movement, Kamei Shizuka, who said that I "lack credentials as a human being." To the contrary, his remark demonstrates the absence of any perspective of human rights.

Kamei Shizuka

Interviewer: It is clear that the death penalty has become a tool of political opportunism.

Hatoyama: Once the sentence is carried out, it cannot be reversed. Retrials, legal protests, and the possibility of amnesties must be examined, and court records must be reread. The mentally incapacitated may not be executed. And then there are the death penalty abolitionists. Though I have no intention to meet Mr. Kamei, I might like to meet and speak with Hosaka Nobuto. In fact, those who most dread dealing with the death penalty are the administrators of the Ministry of Justice (MOJ).

Interviewer: The MOJ is averse to carrying out the death penalty?

Hatoyama: Discussing it is like opening a Pandora's Box or breaking a taboo. But on the other hand, if nobody…breaks the taboo, the situation will remain stagnant.

Interviewer: I understand that there is a necessity for Japan to deviate from the normal flow of world affairs. Though there has been much debate between the abolitionists and death penalty supporters, it can be said that intellectual deliberation regarding the implementation of the death penalty has ceased in Japan. It is quite certain, as you espouse, that not a few people think it strange that the frequency of executions should change according to the attitude of the minister in office. The previous minister Nagase Jinen executed ten convicts; his predecessor Sugiura Seiken executed none. The two previous ministers only executed two.

Hatoyama: It is terribly strange. This is why 80% of the public support me. As I said before, I think we should think calmly about the death penalty. I recognize the tide of abolitionism that is sweeping the EU and other places. On the other hand, regarding present day Japan, I do not think that we can consider abolition.

Interviewer: Why should Japan not consider abolition?

Hatoyama: As the Japanese place so much importance on the value of life, it is thought that one should pay with one's own life for taking the life of another. You see, Europe is a civilization based on force and strife (*chikara to tousou*). Conversely, things there are moving against the death penalty. This is an important point to understand. The so-called civilizations of force and strife are the opposite of us. From incipient stages, their conception of the value of life is weaker than that of the Japanese. Therefore, they are moving toward abolition of the death penalty. It is important that this discourse on civilizations be understood.

Interviewer: I hear there are 104 people on death row. Now to ask you frankly, are you averse to signing even one execution?

Hatoyama: I don't like it. But in rebuttal I am criticized for being irresponsible. People say, "he shouldn't be a justice minister." But isn't this very human? Life should not be disposed of haphazardly. As a minister, I cannot escape this point. As I respect life, I want those who take life as murderers to compensate appropriately. Despite the rising tide against the death penalty, from the standpoint of public security and the principles of respect for life, we cannot allow those who kill repeatedly to escape the death penalty. That's why I think the death penalty should be carried out, and the system should not be abolished.

Interviewer: Under the present system, someone must carry out this unpleasant job, but wouldn't it be violent to execute "automatically?" Isn't the present system based upon the Justice Minister having the final decision before signing the warrant for execution?

Hatoyama: The word "automatic" has been bandied about. The final signature is that of the minister. But I wonder if an examination and decision couldn't be left to a professional body. The chances of wrongful conviction without a doubt should be zero, the possibilities of retrial, the possibilities of amnesty, and the mental condition of the accused should be clarified. If a professional body makes a decision, then it is fine to stamp the document. What I am saying is that we must move in this direction.

Interviewer: It seems you are being criticized for trying to shirk responsibility. But if an objective professional body were to read and evaluate the transcripts, and carefully examine the case, you are saying that the minister would then be able to automatically stamp death warrants?

Hatoyama: Yes, Yes. Yes. From retrial to petition for amnesty, after a thorough examination, then stamping the document would be easy. This is a proper response to the demands of the law. The Code of Criminal Procedure states that after confirmation by the Supreme Court, the execution must be carried out within six months. But what we have in place now is a kind of illegal situation in which the average wait is seven and a half years. If the Ministry of Justice holds on to an illegal system, can we say that this is a nation dependent on the rule of law? In the same sense, it can be said that the Ministry of Justice, the guardian of the laws, is not responding to the demands of proper jurisprudence.

Interviewer: So the Ministry of Justice is ignoring an illegal situation? How is that?

Hatoyama: Hmm. That relates to theories of civilization. From my standpoint, it can be admitted that Japan is a nation based on law. But the laws are not obeyed. I think the reason is the influence brought by the increase of abolitionist countries. And if we examine countries that have abolished the death penalty, we see treatment of criminals that is three or four times as harsh as Japan. For example, in Japan there is a right to silence, but in England, if you keep silent, this means you acknowledge guilt. There are many countries that do not recognize "double jeopardy" statutes. In addition, from the standpoint of criminal law, particularly in Europe, it is said that criminals are punished severely because there is no death penalty.

Interviewer: In place of life imprisonment with parole, there are many countries that have life without parole. The most representative is the USA where the law depends on the state. But the rate of recidivism for crimes against minors and sex offenders is very high, so human rights are being restrained in favor of penalties?

Hatoyama: The problem of recidivism is difficult, isn't it? Prison facilities are supposed to carry out corrections. But in fact, recidivism is high in Japan. About 60% of convicted felons are second offenders, and third offenders.

Interviewer: That is something which cannot be helped...and is certainly a fact. Perhaps, corrections are a projected truth of the Ministry of Justice? And why do we lock them away.....just for punishment? I do not think it is possible to reform adult criminals through imprisonment.

Hatoyama: I do not agree with that position. But it is a fact that the word imprisonment includes "punishment." This is a way of suppressing crime. The other day, I visited Mine Prison in Yamaguchi prefecture. This is of the PFI style, run by a private business. The signboard outside the prison says "Mine Social Restoration Promotion Center," but I think this is odd. I believe that social restoration is necessary. But if we use this name, and abandon the word prison, the meaning of punishment becomes lost. Likewise, control becomes lost.

Interviewer: There are a lot of reasons for abolishing the death penalty, of which the problem of wrongful convictions weighs heavily. Recently, a decision of not guilty was rendered in the Toyama Rape Case. As Minister of Justice, don't you think that in these cases, the prosecutors and judges should be subject to some kind of penalty?

Hatoyama: In this case, the victim confessed, recanted, and then admitted to the crime again, didn't he? The case should have been weighed more on evidence than just a confession. An editorial in The Yomiuri newspaper went as far as to criticize the state-appointed lawyers. Wrongful convictions, without exception, should be kept to zero….

Interviewer: Mistakes are human, but shouldn't those who blunder be sanctioned? Especially prosecutors and judges who send innocent people to jail?

Hatoyama: On the other hand, being too careful is a problem

Interviewer: It is a universal principle that the accused be given the benefit of the doubt, right?

Hatoyama: This is an idea which I want to constrain. If prosecutors are not vigorous, we have a problem.

Interviewer: In a private company, if somebody makes a mistake--like a judge who sentences an innocent man -- continuing at the same job is unimaginable.

Hatoyama: We cannot escape the truth. Perhaps the chief of the Public Security Commission should be consulted and his opinion evaluated. But you shouldn't kill the bull because the horns are dangerous.

Interviewer: Another point, which begs clarity, in regard to the plan to increase the number of people who pass the bar exam to 3,000, you submitted a counterproposal stating that "the number is too high, and will bring about a decrease in quality of the legal profession." What was your thinking?

Hatoyama: Taking into account our nation's government and administration, I think Japanese civilization will suffer the most. As the Japanese respect the value of life, there is a strong and pressing demand to maintain order. Similarly, Japan is a civilization of beauty and compassion, a civilization of harmony. This is not to sanction collusion (dango), but engaging in dialogue and reciprocal understanding is a wonderful characteristic of Japanese civilization.

The fact is, since the West is a very dry civilization, it's all right to take everything to court. This type of thinking will disrupt and erase the very best parts of Japan. On the other hand, we need lawyers with specialties, and the number of lawyers employed at companies is quite small. But in America, it is so damn easy to acquire an attorney's license. And what kind of results has this brought? Everything over there is lawsuit, lawsuit; it's a litigious society.

Interviewer: Exactly. But recently, even in Japan, there is an increase in politicians who eschew prior negotiations and take their cases to the media. Up to now, Japanese society has always been about discussion . . .

Hatoyama: When I was a student, 500 people passed the bar exam each year. You had to study very hard to pass. Later, the number was raised to 700. And now with the existence of law schools, as a former Minister of Education, I just cannot agree. Some people might doubt me, but the present tide of increasing law schools, it's not much different than driving schools; you just pass, and get an exemption from the "Local Road Exam." It is bad for the institution of law to become like this.

Interviewer: You see the increase as too drastic?

Hatoyama: For Japanese, at all costs, we must preserve the history and tradition of jurists as extraordinary people. Presently, it is said that there are many people who cannot find work even after completing their legal apprenticeship, especially those who have just finished. Therefore, in order to make a profit, I hear the ratio of miscreant lawyers will increase.

Interviewer: What should be done?

Hatoyama: All we can do is decrease the number or people allowed to pass the annual bar exam. The number should be decreased from the present 3,000 to 1,500. I think that amount is proper.

Interviewer: Lastly, I would like to ask your opinion of the upcoming quasi-jury system. There's some anxiety that Japanese people, being over-reactive, will view the defendant harshly, and this will directly affect the verdict. How do you feel about this?

Hatoyama: The quasi-jury system will be enacted. I hope it can be implemented as smoothly as possible. The public still does not understand the system completely. Under the jury system, basically, the judge does not participate in the decision of guilty or non-guilty, but decides the sentence. In the Japanese case, one case will require six members of the public (sitting with three judges) to be selected from a pool of 100. There will be wide latitude for withdrawals, taking into consideration the care of infirm parents, long business trips, etc. And in addition, we want to select people with common sense, and leave out those who bring narrow pre-dispositions. It will be extremely important to select the correct six people.

Interviewer: Apart from selecting those with common sense, many will want to withdraw because of work, or family…?

Hatoyama: You are focusing on the bad. But I think we will take these facets under serious consideration. The foundation of the quasi-jury system is to arrive at a correct and commonsensical decision, using a wide base of people, not dependant on the decision of a few specialists. But as an idea, it is an imitation of foreign countries. I believe it is being enacted in Japan because it is being done overseas. I think it will be great if the system works well, and that it should be re-evaluated in 10 or 20 years.

Interviewer: So try it, and if it fails, then quit?

Hatoyama: Yes, I think a re-evaluation will be necessary after 10 or 20 years. I bet the Ministry of Justice is not happy with that remark. Today, everything I have said will anger the Ministry of Justice. (Laughs).

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