

Dynamic Treatment Scheme for Lifers:

Is the Life Imprisonment without Parole(LWOP) the Cruel but Usual Punishment?

July 18-21. 2021, on Zoom

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Introduction

Japan is one of the few democratic countries, along with the United States of America, that has the death penalty. In recent years, an increasing number of states in the United States have abolished or placed a moratorium on the death penalty, and many jurisdictions have now abolished or suspended the death penalty, either legally or de facto. In Japan, by contrast, both the government and the Diet have retained the death penalty because of the dominant public opinionvits retention, and abolitionists are in the minority on the right.

According to the Cabinet Office's Public Opinion Survey on Basic Legal Systems (November 2019 Survey), published on 17 January 2020¹, the answers to the question, “ There are such three opinions on the system of death penalty. With which of them do you agree?” are as follows: (a) abolitionists 9.0%, retentionists 80.8% and no answer 10.2%. However, when asked whether they thought it would be better to abolish the death penalty or not if LWOP were to be introduced, 35.1% of the respondents said that it would be better to abolish the death penalty and 52.0% said that it would be better not to abolish the death penalty. In

¹ Cabinet Office Public Opinion Survey November 2019

<https://survey.gov-online.go.jp/r01/r01-houseido/2-2.html> (website version on 01.10.2021)

addition, 12.8% of the respondents answered that they "don't know and cannot say in general". As a result of the introduction of life sentences, the number of those who argue for the abolition of the death penalty has increased by 26.1%, while the number of those who argue for its abolition has decreased by 18.2%. Therefore, those who want to abolish the death penalty or apply it more restrainedly should consider the introduction of life sentences.

I will examine how, if LWOP is to be introduced into Japanese criminal justice, the treatment scheme can be improved to make the punishment less unusual, even if still cruel. For the purposes of this paper, the order of consideration is as follows. the legal status of life sentenced offenders de jure; the real situation of life imprisonment de facto; Life of Lifers in penal institutions; Fixed and static treatment and the "Dynamic Treatment Scheme for Lifers".

[TABLE 1] Survey on attitudes towards the death penalty (November 2019)

Q1. There are such three opinions on the system of death penalty. With which of them do you agree?

- (a) Any death penalty should be abolished. (9.0%)
- (b) Some death penalties it can't be helped. (80.8%)
- (c) I can't understand it or answer it as a rule. (10.2%)

Q2. If the "LWOP" as a new system could be introduced, "The system of death penalty would be abolished?" or "It should be retained?"

- (a) Any death penalty should be abolished. (35.1%) ↑ 26.1
- (b) Some death penalties it can't be helped. (52.0%) ↓ 18.2
- (c) I can't understand it or answer it as a rule. (12.8%) ↗ 1.6

Resource: Cabinet Office Public Opinion Survey November 2019

1. The Legal Status of Lifers in Japan: *Death and Life de jure*

The Japanese Government was proud, "Japan is one of the most safe and secure countries all over the world". In 1990s, however, the pride was wounded because the number of crime rate and prison population had been increasing through the 1990s and the beginning of 2000s.²

² The trend in the number of reported cases, cleared persons and clearance rate for Penal

Despite of the safe and secure society, the Japanese Government retains death penalty as a system and keeps executing by hanging almost every year. It is criticized as brutal by international human organizations and NPOs, especially by the European Union.

On the other hand, the Government is prompting policies concerning the Prevention of Repetition of Crimes Act, which focuses on corrections in prisons and juvenile training schools and rehabilitation by probation offices.

1.1. Penal Code³

The Japanese Penal Code (Act No. 45 of 1907) prescribes categories of punishments (§ 9), which are categorized as follows: the principal punishments; death penalty; imprisonment with work; imprisonment without work, fine, misdemeanor imprisonment without work and petty fine with confiscation as a supplementary punishment:

Death Penalty (§ 11) :(1) The Death penalty shall be executed by hanging at a penal institution. (2) A person who has been sentenced to the death penalty shall be detained in a jail until its execution.

Life Imprisonment with work (§ 12): (1) Imprisonment with work shall be either for life or with a definite term, and the definite term of imprisonment with work shall be not less than one month but not more than 20 years.” (2) Imprisonment with work shall consist of confinement in a penal institution with assigned work.

Imprisonment without Work (§ 13) :(1) Imprisonment without work shall be either for life or for a definite term, and a definite term of imprisonment without work shall be not less than one month but not more than 20 years.” (2) Imprisonment without work shall consist of confinement in a penal institution.

Code offenses since 1946 [Fig. 1-1-1-1 Penal Code offenses: reported cases, cleared persons and clearance rate] **in:** The Ministry of Justice of Japan, *WHITE PAPER ON CRIME 2019*, (2020:Tokyo)

<https://hakusyo1.moj.go.jp/en/68/nfm/mokuji.html> (website version on 01.10.2021)

³ *Penal Code*(Law number: Act No. 45 of 1907),in: *Japanese Law Translation*

<http://www.japaneselawtranslation.go.jp/law/detail/?id=1960> (website version on 01.10.2021)

Additionally, Judges shall reduce by sentence the death penalty, or imprisonment with or without work for life to imprisonment with or without work for a definite term in mitigating cases, the maximum term of which shall be 30 years, while they shall extend imprisonment with or without work for a definite term to 30 years in aggravating cases. (article 14).

1.2. Constitution⁴

The Constitution of Japan (Promulgation: November 3. 1946/Enforcement: May 3. 1947)

stipulates the following two articles in relation to the death penalty:

Article 31. No person shall be deprived of life or liberty, nor shall any other criminal penalty be imposed, except according to procedure established by law.

Article 36 The infliction of torture by any public officer and cruel punishments are absolutely forbidden.

The explicit provision of Article 31 can be read as stipulating that life may be deprived according to the procedure prescribed by law. Article 36, however, absolutely forbids cruel punishments and can be interpreted as prohibiting the death penalty if it is a cruel punishment. The prohibition of cruel and unusual punishment clause in Article 36 is generally understood to have its origin in the Proclamation of Cruel and Unusual Punishment clause of Eighth Amendment to the United States Constitution⁵. Its root is surely the Bill of Rights 1689 in England, but what is the most popular is the Eighth Amendment to the United States Constitution which is ratified in 1791.

1.3. Universal Principle in Human Rights

After World War II, the Article 5 of the Universal Declaration of Human Rights was adopted by the United Nations General Assembly on December 10. 1948, that is "No one shall be

⁴ http://www.japaneselawtranslation.go.jp/law/detail_main?id=174

(website version on 01.10.2021)

⁵ The 8th Amendment provides, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." the Supreme Commander for the Allied Powers drafted in February 1946 their bill in which Article 34 prescribed "The infliction of torture by any public officer is absolutely forbidden." and Article 35 " Excessive bail shall not be required, nor cruel or unusual punishments inflicted." The Constitution originated in the phrase of "cruel and unusual".

subjected to torture or to cruel, inhuman or degrading treatment or punishment.”⁶
European Convention on Human Rights in 1950⁷(Article 3) prescribes “No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

The International Covenant on Civil and Political Rights in 1966 (Article,1)⁸ “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

The Convention against Torture and other Cruel, Inhuman or -Degrading Treatment or Punishment in 1984 defines the term of torture.⁹ The Charter of Fundamental Rights of the European Union in 2000 prohibits torture and inhuman or degrading treatment or punishment, that is,“ No one shall be subjected to torture or to inhuman or degrading

⁶ <https://www.un.org/en/about-us/universal-declaration-of-human-rights>
(website version on 01.10.2021)

⁷ https://www.echr.coe.int/Documents/Convention_ENG.pdf
(website version on 01.10.2021)

⁸ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
(website version on 01.10.2021)

In Article 6, paragraphs (1) “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” and (4)“Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.” ,however, seem to contradict each other.

⁹ https://www.mofa.go.jp/policy/human/conv_torture/conv_torture.html
(website version on 01.10.2021) Article 1 (1) defines the term "torture" as “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

treatment or punishment.” (Article 4)¹⁰

In the context of international human rights, the words of "cruel and unusual punishment" defines as follows: the death penalty; torture; inhuman and degrading treatment; and excessive fine or deprivations. Only in countries where the death penalty exists that the question arises as to whether cruel and unusual punishment includes the death penalty.

2. The Contemporary Situation of Lifers: *Death and Life de facto*

2.1. Is the Life Imprisonment LWOP or LWP?

As already mentioned, the Japanese Penal Code allows for life sentences (Articles 12 and 13), which are explicitly a life sentence with parole (LWP)(Article 28).¹¹ Life sentences in Japan are free sentences with no fixed date of release at the time of trial; in other words, they are "indefinite sentences". The Ministry of Justice, however, currently defines life imprisonment as “a sentence for life”, i.e. the sentence is served until the death of the convict. This means that parole is not allowed. In other words, unless parole is granted, the sentence is served in prison or other penal institution until death. Even if he is granted parole, he will be placed on probation for the rest of his life. Even if they are allowed to be released on parole, they are placed on probation for the rest of their lives. They will be under the supervision of probation officers for the rest of their lives unless they are pardoned.”¹²

To simplify our questions, a life sentence is the LWP or the LWOP, Is it “a label scam” that the life imprisonment is the LWP de jure, but the LWOP de fact?

2.2. Statistics on Life Imprisonment

¹⁰ https://www.europarl.europa.eu/charter/pdf/text_en.pdf

(website version on 01.10.2021)

¹¹ Article 28. (Parole) When a person sentenced to imprisonment with or without work evinces signs of substantial reformation, the person may be paroled by a disposition of a government agency after that person has served one-third of the definite term sentenced or 10 years in the case of a life imprisonment.

¹² <https://www.moj.go.jp/content/000057317.pdf>(in Japanese, website version on 01.10.2021)

Cf. https://www.moj.go.jp/hogo1/soumu/hogo_hogo21.html

The following [Table 2] is a summary of the status of life sentences and the operation of parole in relation to life sentenced prisoners, based on data published by the Ministry of Justice.¹³ The main types of offences for which the death penalty and life sentences are handed down are murder and manslaughter. Comparing 2006 and 2019, the number of reported homicides has indeed fallen from 1309 to 950 (72.6%) and the number of cleared persons from 1241 to 924 (75.5%). Manslaughter(robbery resulting with death) have also fallen from 52 to 21 (40.4%) and from 83 to 25 (30.1%) respectively. However, the decline has not been as drastic as for life sentences. Since the discretion of prosecutors and judges plays a very large role in criminal trials in Japan¹⁴, it is likely that there have been significant changes in sentencing standards over the last 14 years. We criminologists have explained the rapid increase in the number of reported crimes and cleared persons made in the late 1990s and early 2000s by the rise of the victims' rights movement and so-called "penal populism". However, the recent decline in crime figures and prison populations in the developed capitalist countries has not been explained enough by a clear cause. In Japan, this phenomenon has not been adequately explained too.¹⁵

[Table 2] Status of life sentences and the operation of parole for life sentenced prisoners (2006-2019)

	1) New	2) Total*	3) Parole	4) Death	5) Released
2006	136	1596	3	15	18
2007	89	1670	1	13	14
2008	53	1711	4	7	11
2009	81	1722	6	14	20

¹³ [Resource] Status of life sentences and the operation of parole for life sentenced prisoners (November 2016-2020) by the Ministry of Justice

<https://www.moj.go.jp/content/001274998.pdf>

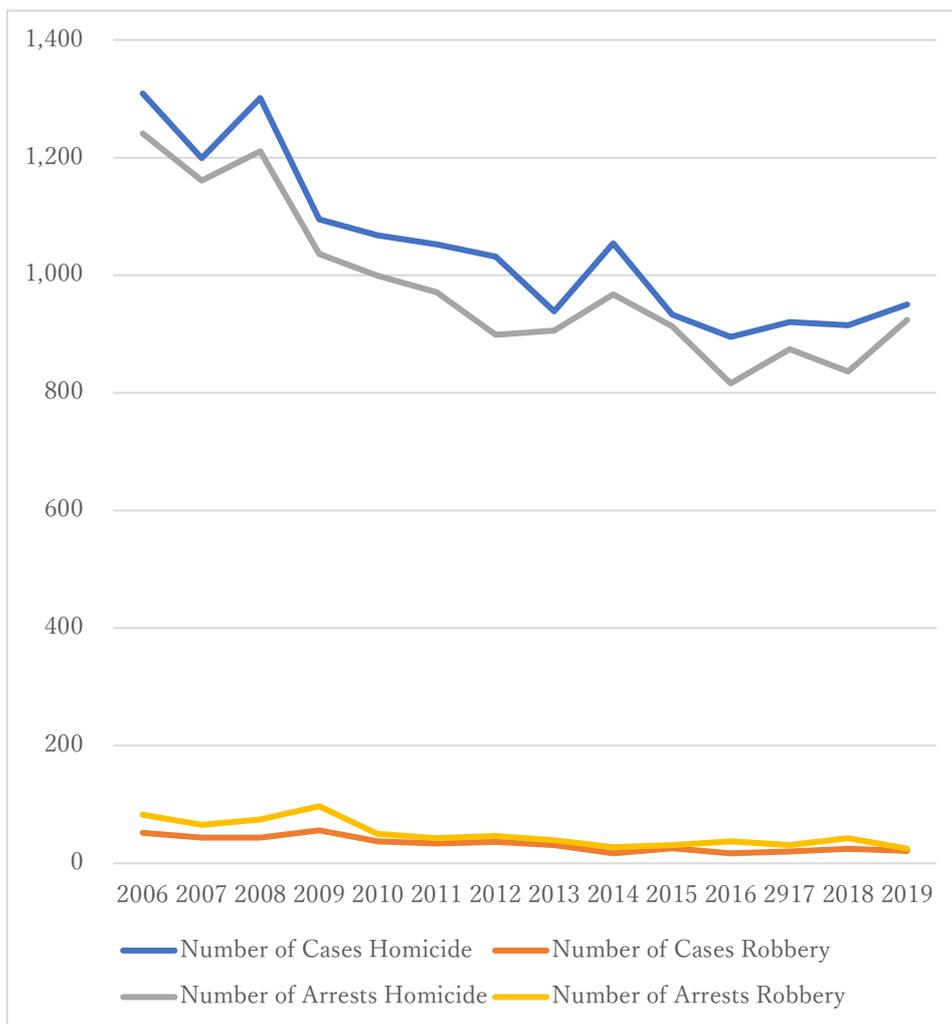
¹⁴ Miyazawa, Setsuo (2012), "The Enigma of Japan as Testing Ground for Cross-Cultural Criminological Studies," *International Annals of Criminology* 50(1/2), p/153-175.

¹⁵ Ishizuka, Shinichi (2014), Punishment and Incarceration in Japan: A Net-Widening of Crime Control and A New Priority System of Prosecution, *Punishment and Incarceration : A Global Perspective Sociology of Crime, Law and Deviance*, Vol.19, pp.227-253; Doi, Takayoshi [eds.] (2013), Special Issue: What Does 'the Decline in Crime Statistics' Tell about the Japanese Society?, *Japanese Journal of Sociological Criminology*. No.38, 2013, pp.3-108.

2010	50	1796	7	21	28
2011	43	1812	3	21	24
2012	34	1826	6	14	20
2013	39	1843	8	14	22
2014	26	1842	6	23	29
2015	25	1835	9	22	31
2016	14	1815	7	27	34
2017	18	1795	8	30	38
2018	25	1789	7	24	31
2019	16	1765	16	21	36
	649	1772.6	91	266	356

- 1) Number of new inmates serving life sentences (persons)
 - 2) Number of life sentenced prisoners in prison at the end of the year (persons)
 - 3) Number of new parolees serving life sentences (persons)
 - 4) Deceased indefinite prisoners (persons)
 - 5) Total number of life term prisoners released from prison
- Average period of imprisonment

[Graph 1] Number of Homicide and Robbery (2006-2019)



[Resource] *White Paper on Crime* by the Ministry of Justice

Robbery means the numbers of robbery resulting in death.

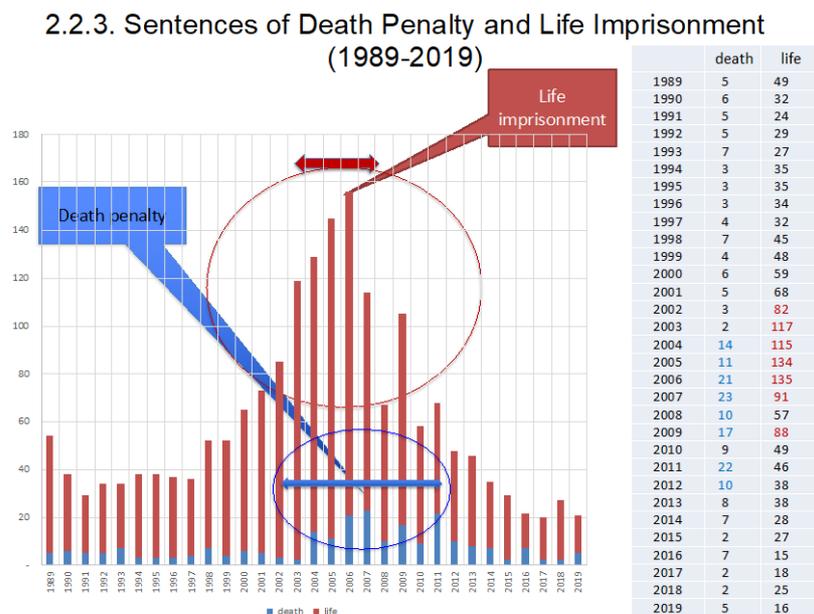
2.3. Background of Increasing Lifers

In order to look at the death penalty and life imprisonment over a slightly longer span of heavy penalties and lenient sentences [Graph 2] Sentences of Death Penalty and Life Imprisonment (1989-2019) has been prepared.¹⁶ For death sentences, the period from 2004

¹⁶ Ishizuka, Shinichi(2020), "Nach den Hinrichtungen von Mitgliedern der AUM-Sekten: Ist Japan ein Rechtsstaat?", in: Rosenau, Henning, Kunig Philip & Yıldız, Ali Kemal [Hrsg.], *Rechtsstaat und Strafrecht: Anforderungen und Anfechtungen*, Tübingen: Mohr Siebeck, S.175-190.; Ishizuka, S.(2017), "The Actual Discussion around Death Penalty in Japan, in: Duttge/Tadaki (Hrsg.), *Aktuelle Entwicklungslinien des japanischen Strafrechts im 21.*

to 2012, and for life sentences, the period from 2002 to 2009, saw the emergence of a phenomenon of unusually severe penalties in Japanese criminal justice, which can be called the "Monsieur Verdoux".¹⁷

[Graph 2] Sentences of Death Penalty and Life Imprisonment (1989-2019)



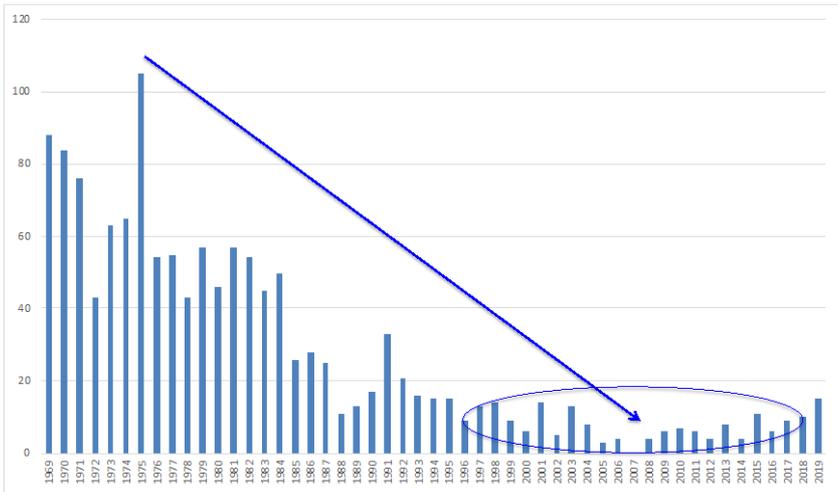
The increase in the number of indefinite prisoners was not only caused by an increase in the number of new indefinite prisoners, i.e. entrants at the entrance. As shown in [Graph 3], There was also a significant restriction of lifetime parolees, i.e. entrants at the exit.

[Graph 3] Number of Releasing Life Imprisonment Inmates(1969-2019)

Jahrhundert, Tübingen: Mohr Siebeck, S. 201–218.; Ishizuka, S. (2006), "Todesstrafe in Japan: Ein schlechtes Gewissen in der internationalen Gemeinschaft", *ZIS*, S. 330–337.

¹⁷ Monsieur Verdoux in French means the era of homicide madness, which is a 1947 American comedy film directed by and starring Charlie Chaplin.

2.3. The Number of Releasing Life Imprisonment Inmates (1969-2019)



As a result, as shown in [Table 3], the period of imprisonment has been prolonged, and only 8% of the inmates sentenced to life imprisonment have not passed the minimum period of 10 years of detention, 38.2% between 10 and 20 years, and 18.4% between 20 and 30 years. More than half of them are eligible for parole, but in reality they have not been released. More than 10 per cent of the inmates have been in prison for more than 30 years. Most of them are over 70 years old. More and more people are ending their lives in prison with no place to stay. In terms of age, about 12 per cent of the prisoners are between 20 and 40, 42 per cent between 40 and 60, 41 per cent between 60 and 80, and 77 (about 4 per cent) are over 80. The LWP in Japan is no longer, in effect, the LWOP.

[Table 3] Term and Age of Life Imprisonment sentenced Inmates

2.3.1. Life imprisonment with Parole?

The term of imprisonment

	Term	%	Age
$X < 10$	594	8	50.3
$10 \leq X < 20$	701	38.2	55
$20 \leq X < 30$	338	18.4	64.3
$30 \leq X < 40$	159	8.7	67.9
$40 \leq X < 50$	31	1.7	72.5
$50 \leq X$	12	0.7	79.8

The Age of Lifers

	Age	%
$X < 20$	0	0
$20 \leq X < 30$	34	1.9
$30 \leq X < 40$	197	10.7
$40 \leq X < 50$	363	19.8
$50 \leq X < 60$	412	22.5
$60 \leq X < 70$	464	25.3
$70 \leq X < 80$	288	15.7
$80 < X$	77	4.2
total	1835	100

3. Treatment of Indefinite Prisoners: *Lifers' Live in Japanese Prisons*

3.1. Treatment Indexes and Guidelines

The core of the correctional treatment for sentenced inmates consists of work, guidance for reform and guidance in school courses. The content and delivery of correctional treatment must be tailored to the individual characteristics and circumstances of each sentenced inmate (principle of individualized treatment). Each penal institution conducts an assessment of the individual characteristics and circumstances of each sentenced inmate (treatment assessment), utilizing specialized knowledge and techniques, such as medicine, psychology, pedagogy and sociology. A detailed assessment is conducted at designated penal institutions (assessment centers) for new sentenced inmates aged less than 26 and sentenced inmates who need a specific assessment to be enrolled in special guidance for reform.

Following the assessment (including assessment at assessment centers) upon the commencement of the execution of a sentence, penal institutions designate one or more treatment indexes for each sentenced inmate. The treatment indexes take into account the types and contents of correctional treatment, and the characteristics and criminal tendencies of the sentenced inmate.

A treatment guideline, which indicates the goals, basic content and methods of correctional treatment, is specified for each sentenced inmate in accordance with the result of the

treatment assessment that takes place upon the commencement of the execution of his/her sentence. Correctional treatment is implemented based on the treatment guidelines.

[Table 4] Classification of Inmates(White Paper on Crime, 2019)

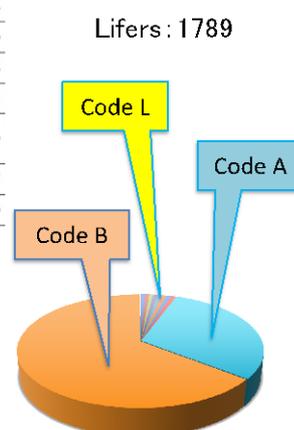
The number of sentenced inmates as of the end of 2018 by their treatment index.

3.1. Characteristics and criminal tendencies of inmates (as of December 31.2018)

Characteristics and criminal tendencies	Code	Number of persons
Persons sentenced to penal detention	D	-
Juveniles younger than 16 who need to be accommodated in juvenile training schools	Jt	-
Persons who have mental disorders or disabilities and therefore need to be accommodated in penal institutions where medical treatment is mainly provided	M	257
Persons who have physical diseases or disabilities and therefore need to be accommodated in penal institutions where medical treatment is mainly provided	P	390
Females	W	3,269
Foreign nationals who need different treatment from that for Japanese inmates	F	1,146
Persons sentenced to imprisonment without work	I	100
Juveniles who do not need to be accommodated in juvenile training schools	J	6
Persons whose term of imprisonment to be served is 10 years or more	L	4,742
Adults younger than 26, the correctional treatment of whom places priority on their plasticity	Y	1,749
Persons without advanced criminal tendencies	A	10,077
Persons with advanced criminal tendencies	B	19,550

Note: Inmates who are designated under more than one treatment index are counted under one code selected in order from the top in the table.
Source: Annual Report of Statistics on Correction

- L: Persons sentenced to imprisonment for 10 years or more**
- A: Persons without advanced criminal tendencies**
- B: Persons with advanced criminal tendencies**



The prisons in which they are held are also classified. Indefinite prisoners are classified under index L as they are expected to be held for more than 10 years. In addition, they are reclassified as B-indicators if their criminal tendencies are advanced, and as A-indicators if they are not. Specifically, recidivists and gang members are classified as B-indicators, while other people who are being sent to prison for the first time are classified as A-indicators.

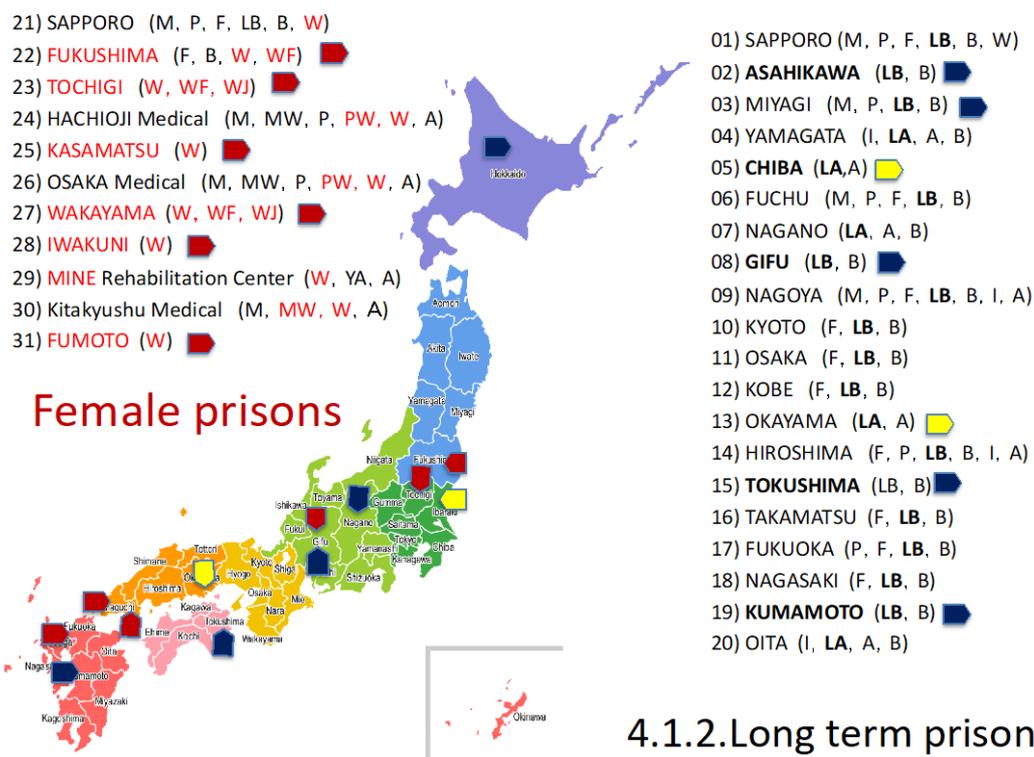
3.2. Detention Facilities for Indefinite Prisoners

As shown in [Figure 1], each of the approximately 100 correctional institutions in the country houses prisoners of a certain index. Indefinite sentenced prisoners are housed in LA or LB. The two yellow facilities are for LA and the five dark blue facilities are for LB. As there is no L indicator for women, indefinite prisoners are housed in the relatively large red women's facilities. In addition to this, prisoners with serious physical or mental disabilities or illnesses

are housed in three medical prisons across the country.

With few exceptions, once an indefinite prisoner has been assigned to a facility, he or she is not transferred to another facility. Therefore, unless they are transferred to a medical prison for a serious illness, they will spend the rest of their lives in the same institution. Unless they are granted parole, their daily life will continue unchanged until they die. This is why life sentences are known as "death sentences that take a long time to carry out".

[Figure 1] Correctional facilities housing indefinite prisoners



3.3. The Monotonous Life of an Indefinite Detainee in an Unchanging Facility

Let's review the typical life cycle of life after crime for life imprisoned prisoners.

If you are arrested as a suspect for a serious crime, such as murder or robbery, you will be held in police custody for 23 days. When the trial begins, you will be held in a detention center under the jurisdiction of the Ministry of Justice until the verdict is finalized. In some cases, they remain in police custody. Once the sentence of life imprisonment has been confirmed, the prisoner is placed in an L-index long-term facility. If the offender's criminal tendencies are assessed to be advanced, he is placed in the LB-index of the most serious security facilities (Asahikawa, Gifu, Tokushima, Kumamoto, etc.); if not, he is placed in the LA-index of

ordinary security facilities (Chiba, Okayama, etc.). They are rarely transferred to other institutions. In exceptional cases, such as when a person is seriously ill, they are sent to medical prisons (Tachikawa, Osaka, Kitakyushu), where they often end their lives.

Daily life in prison is mainly work-based, with a five-day, 40-hour working week, with weekends off. At present, half a day of remedial instruction is included in the work day.

The work is divided into general work (V0) and vocational training (V1). It is very rare that indefinite prisoners are allowed to take part in vocational training, as their chances of reintegration are limited.

Improvement guidance is divided into (R0) general improvement guidance and (R1-6) special improvement guidance. Interested persons are divided into drug addiction, organized crime, sexual offences, victim's point of view, traffic offences and employment support according to the characteristics of the inmates. There are two courses of educational instruction: compulsory remedial education (E1) and special education (E2).

Thus, the life of an indefinite detainee is often a repetition of the same routine in the same institution, a stereotyped and unpalatable life under the present circumstances, where parole is only rarely granted after serving more than 30 years.¹⁸

3.4. Improvement of Life Imprisonment: *Fixed and "Static" Treatment*

The Ministry of Justice used to have the understanding that life sentences in Japan were irregular sentences. However, in the 1990s it changed its view and began to explain that it is a life sentence with parole. In fact, until the 1980s, about 80 per cent of indefinite prisoners were released on parole after serving about 18 years. In the 1990s, however, the number of paroles granted decreased, and prison terms in excess of 30 years became more common. Then, in 2005, with the enactment of the Law on the Partial Revision of the Penal Code, which raised the maximum term of detention from 20 to 30 years, the dominant view became that no one should be released on parole after less than 30 years of imprisonment, despite the fact that this is a life sentence, which is considered more serious than a fixed term sentence. This change in penal policy has had a significant impact on the treatment of indefinite prisoners.

Indefinite prisoners are rarely changed once they are housed in a facility. The only case is when they are transferred to a medical prison due to a serious illness. In the current situation, where parole is rare, inmates are expected to live in the same L-index facility for the rest of their lives.

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In this way, life sentenced inmates will be provided with "*static*" treatment that does not change. Longer incarceration makes the inmate more and more "prisonized". As a result, it is practically very difficult for long-term inmates to find a place and a way to live in normal society.

Therefore, our team decided to investigate the realities of treatment in long-term facilities, analyze the practical problems that prevent resocialization and reintegration, and propose a new treatment program to remedy the problems.

4. Treatment for Indeterminate Inmates in Prisons: *Dynamic Treatment Scheme for Lifers*

4.1. A New Policy: What do you want?

My proposal is as follows:

(1) Introduction of LWOP in the Penal Code: At present, there are two types of harsh punishment in Japan: the death penalty and life imprisonment with parole(LWP). Life imprisonment is, in effect, a life sentence without parole(LWOP), although parole is legally possible. In order to clarify the disparity between law and reality, to restore the balance between the crime committed and the punishment imposed, and to establish the clear boundary between the two, a life sentence without parole should be introduced between the death penalty and the life sentence.

(2) Reform of Treatment for indefinite inmate: With regard to treatment, change the sentencing scheme in order to bring about a change in the current uniform treatment of life sentences with no prospects for rehabilitation or development.

In my opinion, the death penalty by hanging in Japan is in fact a "cruel and unusual" punishment; LWP is a punishment that is not cruel and no more, because it presupposes reintegration into a society; LWOP is considered cruel because there is no possibility of reintegration. However, by improving the "static" carrying way of the execution to a more humane and "dynamic method" that assumes human growth and development, it is possible to change it to something that is not "unusual" in everyone's eyes. As it stands, the use of life sentences in Japan, where the law states that there is a possibility of parole but in fact does not allow it, is a "label fraud" and an inhumane use of punishment that cannot be tolerated under the Japanese Constitution and under international human rights law.

4.2. Old Inmates in Long-term Prisons

We can find a lot of people who are detained on the basis of nominal dangers and risks, even

though there is no real risk of harm. If we could introduce a new scheme of treatment, which could be humane for all inmates, all life imprisonment, especially LWP, should become usual treatment for inmates. Indeed, LWOP remain cruel punishment, because the inmate has to stay in prison. However, LWOP, could become usual punishment. In my opinion, cruel but usual punishment had better than cruel and unusual one.

As for such elderly inmates, who are 70 years of age or older, execution of their sentences should be suspended in principle to the extent permitted by the scope of their responsibility, since in most cases there is no danger to society.(§ 482(2) of the Code of Criminal Procedure) The Code of Criminal Procedure stipulates that inmates over the age of 70 may be exempted from execution. In reality, however, there are 365 indefinite prisoners over the age of 70.¹⁹

4.3. Socialization of Treatment in Institutions and Community

The dynamic treatment of life imprisonment consists of normalization in institution and desistance in community. The common feature is the respect for the autonomy of the person concerned and the construction of schemes to support their growth and development.

(1) Normalization in Prisons

Prisoners sentenced to life imprisonment are initially transferred from the detention centre to heavy security prisons, where they serve from five to ten years and, if their performance is good, are transferred to long-term institutions of normal treatment. (In some cases, it is possible to place the prisoner in a regular facility from the start. After five years' imprisonment and good performance, the prisoner is transferred to an open or halfway house, and eventually to a remission of detention, e.g. by weekend detention.

(2) Desistance in Community

With regard to the incommunicado treatment of indefinite detainees, if they are not eligible

¹⁹ Code of Criminal Procedure (Law Number: Act No.131 of 1948) Article 482 He who is sentenced an Imprisonment with work, it without work, or a short imprisonment, could be suspended under following conditions enforced by the prosecutor, who belongs to the prosecutor office corresponded the sentencing court or has jurisdiction over this located area:
(2) The person is seventy years of age or older

for parole, they should be granted parole as soon as possible. Then move to alternative detention measures such as open facilities and weekend detention. Finally, they are placed on supervised and supported probation and, if the conditions for amnesty are met, they are pardoned by administrative measures.

[Scheme for indefinite Inmates]

- ▶ Finalized Indefinite Sentenced Inmate
- ⇒ Maximum security prisons (LB indicate)
- ⇒ Normal security prisons (LA indicate)
- ⇒ Low security prisons (A indicate)
- ⇒ Open prisons or Half way houses (A indicate+ Open)
- weekend detention (A indicate+ Part time detention)

[Scheme for Indefinite Parolees]

- ▶ Indefinite detainees who have served a certain period of time
- ⇒ Early Parole
- ⇒ Half way houses or weekend detention
- ⇒ Probation with supervision and support
- ⇒ Pardon = a completely free citizen

Conclusion

On the one hand, there are researchers who say that life in prison is more brutal than the death penalty because it is a marathon without a call. On the other hand, there are prison officials who say that prisoners serving life sentences with an uncertain future cannot be treated.

In the Meiji era (1868-1912), during the deliberation process for the revision of the old penal code to the current one, a member of the Diet quoted a part of Shigejiro Ogawa's proposal, and since then it has become a widespread and established theory. Since then, it has become a widespread theory. However, this discourse ignores the differences in sentencing and treatment between 100 years ago and today. During the Meiji era (1868-1912), the treatment

of prisoners was extremely harsh, and imprisonment for 10 years left one physically and mentally exhausted. The senator quoted Ogawa's sentence as a practitioner's opinion in the context of his opposition to life imprisonment, because life imprisonment is as harsh as the death penalty, and because there is a huge difference between life imprisonment and fixed-term imprisonment.

In the Showa era (1926-1989), it was said that it was compassionate not to inform a person of an "incurable disease" such as cancer, and people thought it was kindness to keep it a secret. Doctors, after examining a patient for cancer, would first call the family to discuss whether or not to inform the patient.

Now, in the 21st century, cancer has become a curable disease, and it is recognized that the patient should decide for himself how to live and what to do with his life, even if he has only a few days to live, and that it is his right to do so.

In the last decade of the 20th century, parole for life sentences became rare, and life sentences became, in effect, life sentences. In particular, cases in which the death penalty was sought and the sentence was life imprisonment were given the slang term "MARUTOKU-MUKI (special life imprisonment sentence)", meaning that there was no possibility of parole. Just as consideration for cancer patients is a violation of their rights, it is too much meddling and annoying to make prisoners who have no chance of parole think that they do. Rather, it is a violation of an individual's right to self-determination in designing his or her own life's end. It is the need of the age to decide for oneself.

October 5.2021,Kyoto Japan