

# From Beheading to Hanging: Changes in Methods of Execution in Modern Japan

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## I. Introduction

Japan's Penal Code and other criminal acts identify 17 types of crimes for which death is prescribed as a statutory penalty. The death penalty is both sentenced and executed within the country. The Penal Code stipulates that the death penalty shall be executed by hanging at a penal institution (Article 11 [1] of the Penal Code), and hanging is the only method of execution employed in Japan. The Supreme Court held that the death penalty was constitutional in 1948<sup>1)</sup> and that hanging was constitutional in 1955.<sup>2)</sup>

When did Japan adopt hanging as a method of execution, and how did it become Japan's only method of execution?

This paper describes the changes in Japan's methods of execution.

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1) Supreme Court, March 12, 1948, 2 (3) *Keishu* 191.

2) Supreme Court, April 6, 1955, 9 (4) *Keishu* 663.

## II. Before the *Meiji* Period<sup>3)</sup>

### 1. *Yoro* Penal Code (*Yoro Ritsu*)

It is not known when the death penalty was first legislated, imposed, and executed in Japan. The *Yoro* Penal Code (*Yoro Ritsu*), which came into force in 757, is recognized as the oldest existing statute providing for the death penalty in Japan.<sup>4)</sup> It is said that this statute was modelled on the *Taiho* Penal Code (*Taiho Ritsu*), which was initially compiled in 701<sup>5)</sup> and modeled on the Chinese legal system (*Ritsu-Ryo* system<sup>6)</sup>). Unfortunately, neither the *Taiho* Penal Code nor the *Yoro* Penal Code exist today. However, the *Ryo no Gige*, a commentary on the *Yoro* Penal Code compiled in 833, remains and describes its provisions. According to the commentary,<sup>7)</sup> the *Yoro* Penal Code (*Ritsu* first volume) stipulated two methods of execution: hanging and beheading. This provision is the oldest statute prescribing the death penalty in Japan and is believed to have been in effect for over 200 years.

However, no death penalty was executed between 810 and 1156, when emperors and nobles held political power. Emperors pardoned those sentenced to death and reduced their sentences to deportation.

### 2. *Kujikata Osadamegaki*

Later, when samurai practically governed Japan (1185 to 1867), beheading was commonly used as a method of execution.

In the *Edo* period (1600 to 1867), during which samurai held stable political power for more than 260 years, hanging was apparently not stipulated in any statute.

For example, *Kujikata Osadamegaki*, compiled in 1742 and regarded as the most important code of the *Edo* period, was not open to the public, and its provisions are now unknown. However, *Toin Hikan*, compiled in 1841, describes the provisions of *Kujikata Osadamegaki*. According to *Toin Hikan*, Article 103 of *Kujikata Osadamegaki Ge-kan* (Volume 2) prescribed seven methods of execution. The details of each method described below were derived from *Keizai Daihiroku* (*The Great Secret Record of Punishments and*

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3) For details on hanging at that time, see Nagata, K., *Meiji Shoki no Shikei Senkoku no Doko: Kyoto Fushi Tosai no Zen Shikei Senkoku Jiken wo Sozai ni* (*The Trend in Death Sentences in the Early Meiji Era [between 1868 and 1878]: Based on All Capital Cases in "The History of Kyoto Prefecture"*) (1), 71 (1) *Kansaidagaku Hogakuronshu* 1 (2021), at 6–13, 18.

4) It is said to have been compiled in 718, but this is unclear. *Yoro* was the era name used in 718.

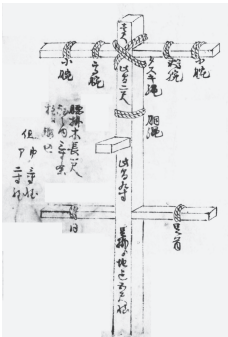

5) *Taiho* was the era name used in 701.

6) *Ritsu* means "criminal law," whereas *ryo* refers to laws that set up administrative organizations.

7) The provision relies on the following books: Kuroita, K., (ed.), *Shintei Zoho Kokushi Taikei Volume 22: Ritsu: Ryo no Gige* (*Newly Revised and Enlarged Compendium of the History of Japan*) (Yoshikawa Kobunkan, 1939); Inoue, M., et al., *Nihon Shiso Taikei Volume 3: Ritsuryo* (*Compendium on the Thought of Japan*) (Iwanami Shoten, 1976).

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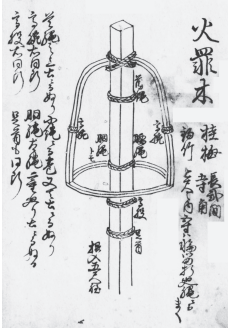

*Crimes*),<sup>8)</sup> which explains Japan's methods of execution with illustrations.

|  |   |
|--|---|
| <p>Crucifying<br/>(<i>haritsuke</i>)</p> |  <p>Figure1-1<sup>9)</sup></p> <p>The executed person was tied to trees with ropes (see Figure 1-1) to keep them from moving and was then stabbed to death with spears.</p>  |
| <p>Sawing<br/>(<i>nokogiribiki</i>)</p>  |  <p>Figure1-2<sup>10)</sup></p> <p>After the executed person was exposed to public viewing while alive for two days and dragged around the city for one day, she/he was seriously injured with a saw (see Figure 1-2) by the family members of the crime victim, among others, and was then crucified and killed.</p> |

8) The manuscript created in 1836 is open to the public as a digital collection of the National Diet Library, Japan, <<http://dl.ndl.go.jp/info:ndljp/pid/1365404>>. The manuscript created in 1850 is open to the public as a digital collection (*Digitalisierte Sammlungen*) of the Berlin National Library (*Staatsbibliothek zu Berlin*; retrieved September 1, 2022 [omitted hereafter]).

9) *Keizai Daihiroku*, <<http://dl.ndl.go.jp/info:ndljp/pid/1365404/43>>.

10) *Keizai Daihiroku*, <<http://dl.ndl.go.jp/info:ndljp/pid/1365404/46>>.

|   |   |   |
|---|---|---|
| Burning at the stake<br>( <i>kazai</i> )  |  <p>Figure1-3<sup>11)</sup></p>  | The executed person was tied to a tree with ropes (see Figure 1-3) to keep them from moving and was then burned to death.   |
| Exposing a beheaded head<br>( <i>gokumon; kyoshu</i> )                                    |   | The executed person was killed by having their head cut off; then, the head was exposed to public viewing for three days.   |
| Beheading of samurai<br>( <i>zan'ai</i> )   |   | This method was used against samurai. The executed person was killed by having their head cut off.  |
| Beheading of people other than samurai while testing Japanese swords<br>( <i>shizai</i> ) |  <p>Figure1-4<sup>12)</sup></p> | This method was used against people other than samurai. The executed person was killed by having their head cut off (see Figure 1-4); then, their body was cut to test the sharpness of Japanese swords ( <i>tameshimono</i> ). |
| Beheading of people other than samurai<br>( <i>geshunin</i> )                             |   | This method was used against people other than samurai. The executed person was killed by having their head cut off.  |

In addition, *seppuku* was prepared for high-ranking samurai as a special method of execution. In the *Edo* period, *seppuku* was a process by which the executioner killed the executed person by cutting off his head with a Japanese sword; therefore, it was a form of beheading.

Moreover, it is said that cruel methods of execution, such as tearing off the limbs of Christians, who were prohibited from practicing their religion in the *Edo* period,<sup>13)</sup> using bulls (*ushizaki*) were applied in the *Edo* period.

11) *Keizai Daihiroku*, <<http://dl.ndl.go.jp/info:ndljp/pid/1365404/39>>.

12) *Keizai Daihiroku*, <<http://dl.ndl.go.jp/info:ndljp/pid/1365404/31>>.

13) Christianity was prohibited in earnest through the Fifth Closure of the Country Ordinance (*Daigoji Sakoku Rei*) in 1639.



As described above, in the *Edo* period, crucifying (*haritsuke*), sawing (*nokogiribiki*), burning at the stake (*kazai*), and beheading (*gokumon*, *zanzai*, *shizai*, *geshunin*, and *seppuku*) were all used as execution methods. Among these, beheading was the most typical execution method. Neither *Kujikata Osadamegaki*, which was the most important source of law in the *Edo* period, nor any other criminal laws provided for hanging.

### III. The *Meiji* Period<sup>14)</sup>

#### 1. The Legal System Immediately After Political Power Was Returned to the Emperor (*Taisei Hokan*)

On October 14, 1867, *shogun* Yoshinobu Tokugawa, the samurai leader, returned political power to the emperor (*Taisei Hokan*). This led to the establishment of the *Meiji* government, centered on the emperor and nobles.

On October 22 of the same year, the emperor ordered the government to maintain the legal system for the time being. Therefore, *Edo* statutes on the death penalty remained in force for a while. Hanging was not used even after Japan's ruler changed from the *shogun* to the emperor.

#### 2. Provisional *Ritsu* Penal Code (*Kari Keiritsu*)

The *Meiji* government tried to conduct politics based on the *Ritsu-Ryo* system, which was a Chinese legal system, as it had approximately 1,000 years ago when emperors ruled Japan. In China, both the Ming Dynasty (1368–1644) and Qing Dynasty (1644–1912)<sup>15)</sup> conducted politics based on this system.

Following the *Ritsu* Penal Code, the *Meiji* government aimed to compile the Provisional *Ritsu* Penal Code (*Kari Keiritsu*) in 1867. The code's core compilers came from the Kumamoto feudal domain (Kumamoto *han*; also called the “Higo *han*”),<sup>16)</sup> a powerful feudal domain in the southern part of Japan in the *Edo* period. They compiled the Code based on the Penal Code of the Kumamoto feudal domain in 1754, which was compiled after the Ming *Ritsu* Penal Code.

The *meirei* part of the Provisional *Ritsu* Penal Code legislated the following five methods of execution:

- \* crucifying (*haritsuke*)
- \* burning at the stake (*fun*)<sup>17)</sup>
- \* exposing a beheaded head (*kyoshu*)

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14) For details on hanging at that time, see Nagata, *supra* note 3, at 5–35.

15) The Qing Dynasty was founded in 1616 in northeastern China and began ruling China in 1644.

16) In the *Edo* period, the feudal government was headed by a *shogun* (*bakufu*) and feudal domains (*hans*) who governed the people in their respective territories.

17) *Fun* (burning at the stake) and *fun* (beheading) have the same pronunciation in Japanese. However, different *kanji* (Chinese characters) with different meanings were assigned to them.

\* beheading (*fun*)

\* cutting diagonally from shoulder to waist (*zan*)

These methods were virtually the same as those stipulated in the criminal code of the Kumamoto feudal domain; however, the Code did not adopt sawing as a method of execution. The month and date when the Code was amended are unknown but are within the same year. Both cutting diagonally from the shoulder to the waist and burning at the stake were abolished, while hanging was adopted.<sup>18)</sup>

In August 1868, the name of crucifying (*haritsuke*) was changed to *takkei*, exposing a beheaded head (*kyoshu*) was changed to *kyoji*, and beheading (*fun*) was changed to *zanshu*. Thus, Japan's methods of execution were as follows: crucifying (*takkei*), exposing a beheaded head (*kyoji*), beheading (*zanshu*), and hanging (*koshu*).

The Provisional *Ritsu* Penal Code was not disclosed to the public. In addition, the regions to which the Code was applied were limited to a part of the territories formerly governed by the emperor and the feudal government headed by the *shogun*. However, when the Code was amended, hanging reappeared as a method of execution.

### 3. New *Ritsu* Penal Code (*Shin Ritsu Koryo*)

The Provisional *Ritsu* Penal Code was abolished in October 1869 and was replaced by the New *Ritsu* Penal Code (*Shin Ritsu Koryo*)<sup>19)</sup> on December 20, 1869.

Article *gokeijo* of *meirei-ritsu-jo* in the first volume of the Code stipulated hanging (*koshu*), beheading (*zanshu*), and exposing a beheaded head (*kyoshu*). Crucifying was not specified in the Code, and was thus abolished. In addition, being forced to kill oneself (*jisai*) was prescribed as a special method of execution applicable to former samurai, government officials, and monks (Article *junktei-jo* of *meirei-ritsu-jo* in the first volume of the Code).

Therefore, the four methods of execution in the Code were hanging, beheading, exposing a beheaded head, and being forced to kill oneself. Beheading was applied to those who committed crimes that were more serious than those punished by hanging (Article *gokei-jo* of *meirei-ritsu-jo* in the first volume of the Code). Beheading was considered crueler than hanging because the head was removed from the body of the executed person. This idea was based on several *Ritsus*, such as the *Ritsu* during the Qing Dynasty in China. Exposing a beheaded head was applied to those who committed crimes that were more severe than the crimes punishable by simple beheading (Article *gokei-jo* of *meirei-ritsu-jo* in the first volume of the Code). The Code prescribed that the executed person had to commit *hara-kiri* by disembowelment.

18) See Proclamation No. 916 of 1867 (administrative official) (October 30, 1867); *Dajokan* no number of 1867 (November 13, 1867).

19) *Dajokan* No. 944 of 1869.

#### 4. Revised *Ritsu* Penal Code (*Kaitei Ritsu Rei*)

The Revised *Ritsu* Penal Code (*Kaitei Ritsu Rei*),<sup>20)</sup> which incorporated amendments to the New *Ritsu* Penal Code, was established on June 13, 1873, and came into force on July 10 of the same year. In the Revised *Ritsu* Penal Code, being forced to kill oneself, which was a special method of execution for samurai among others, was abolished.

As a result, the three methods of execution in the Code were hanging, beheading, and exposing a beheaded head.

#### 5. Two Written Statements of Senate *Genroin* and the Abolition of Exposing a Beheaded Head

On July 9, 1876, the Senate *Genroin*,<sup>21)</sup> which was established in 1875, unanimously adopted a written statement declaring that beheading and exposing a beheaded head should be abolished and that only hanging should be used.<sup>22)</sup> The Senate argued that cutting off the head of the executed person and the excessive bleeding that occurred when beheaded heads were exposed constituted cruelty.

The Senate also pointed out that, when the public saw exposed heads, they did not hate the crime committed by the executed person but, rather, tended to feel pity for them. However, as will be described later, beheading was the most common execution method used at that time, and exposing a beheaded head was also common. Neither beheading nor exposing the beheaded head were abolished.

On May 7, 1878, the Senate *Genroin* again unanimously adopted a written statement on methods of execution.<sup>23)</sup> The statement argued that exposing a beheaded head should be abolished; the government abolished it on January 4, 1879.<sup>24)</sup> As a result, Japan's two methods of execution became beheading and hanging.

At that time, hanging was rarely used, and beheading was the main method of execution, as will be described later.

#### 6. Former Penal Code and Abolition of Beheading

According to Article 6 of the first edition of the Draft of the Penal Code of the Empire of Japan (*Nihon Teikoku Keiho Soan Shōan*),<sup>25)</sup> which seems to have been formulated around 1876, beheading was the only method of execution. Meanwhile, Article 17 of the

20) Proclamation of *Dajokan* No. 206 of 1873.

21) Proclamation of *Dajokan* No. 58 of 1875; Proclamation of *Dajokan* No. 67 of 1875. The members of the Senate *Genroin* were appointed high officials and were not elected. The Senate continued to exist until the Imperial Diet (*Teikoku Gikai*) was established in 1890.

22) Senate *Genroin*, written statement No. 9 (extra edition) of 1876.

23) Senate *Genroin*, written statement No. 25 (extra edition) of 1878.

24) Proclamation of *Dajokan*, No. 1 of 1879.

25) The provision is found in *Nihon Keiho Soan Kaigi Hikki (1)* (*Minutes of the Conference on the Draft of the Penal Code of Japan*) (editor, publishing company, and year of publication are unknown).

Draft of the Penal Code of Japan (*Nihon Keiho Soan*),<sup>26)</sup> drawn up in November 1877, stipulated that hanging was the only method of execution. Finally, Article 12 of the Penal Code (the so-called “Former Penal Code” or *Kyu Keiho*<sup>27)</sup>), established on July 17, 1880,<sup>28)</sup> stipulated that hanging was the only method of execution and abolished beheading.

Boissonade,<sup>29)</sup> a French jurist and legal advisor to the Japanese government, had a strong influence on Japan’s legislation regarding execution methods at that time. Fuse has studied this influence.<sup>30)</sup> According to Fuse, Boissonade initially supported beheading but later recommended hanging. He changed his focus several times, from the pain of the executed person, to the cruelty of the state, and then to the body of the executed as seen by their bereaved families. He thought that hanging was hard to see as cruel, unlike beheading, because the head of the executed person was not cut off. In addition, he argued that the time until death of those executed by hanging could be shortened. In fact, it seems that he was not definite about whether hanging or beheading was better. Fuse concluded that Boissonade abolished beheading and adopted only hanging based on the written statement of Senate *Genroin* arguing that hanging should be the sole method of execution.

As will be described later, hanging was used less often than beheading, even in the 1870s. Therefore, the reason why hanging was adopted instead of beheading was not because it was often used at that time.

Subsequently, the current Penal Code enacted in 1907<sup>31)</sup> also prescribed hanging as the only method of execution (Article 11 [1] of the Code). This provision has never been amended; hanging remains Japan’s only method of execution.

## IV. Sentence and Execution of Hanging<sup>32)</sup>

### 1. Statistics

As noted above, hanging reemerged as a method of execution through the amendment of the Provisional *Ritsu* Penal Code in 1867, alongside other methods of execution. Under the Former Penal Code, established in 1880 and enforced in 1882, hanging was the only

26) The provision is found in Tsuruta, H., et. al. (eds.), *Nihon Keiho Soan (The Draft of the Penal Code of Japan)* (publishing company unknown, 1877).

27) This is called the “Former Penal Code,” in contrast to the current Penal Code, which is described later.

28) Proclamation of *Dajokan*, No. 36 of 1880. The Code came into force on January 1, 1882. Proclamation of *Dajokan*, No. 36 of 1881.

29) Gustave Émile Boissonade de Fontarabie (1825–1910) drafted not only the Former Penal Code but also the Criminal Procedure Act (*chizaiho*) and a draft of the Civil Code (*minpo*) in Japan.

30) Y., Fuse, *Nichibei no Shikei Shikko wo Meguru Tomeisei ni Kansuru Ichikosatsu: Koshukei no Zangyakusei wo Chushin ni (I) (Secret Cruelty of Death by Hanging: A Study of Execution in Japan and the U.S.A. (I))*, 47 (1) *Ryukoku Hogaku* 57 (2014), at 75–81.

31) Act No. 45 of 1907.

32) For details, see Nagata, *supra* note 3, at 27–34.

method of execution.

Did hanging replace and displace other methods of execution by being increasingly used after its reemergence in 1867, finally becoming the only method used? The answer is “No.”

Below, we examine the changes in the number of death sentences and executions by method.

Table 1 shows the number of death sentences by method of execution. Criminal statistics were neither collected nor compiled in the early *Meiji* period. As a result, the figures available for the death sentence by execution method date back to only 1873.

**Table 1 Numbers of Death Sentences by Method of Execution**<sup>33)</sup>

|      | Exposing a Beheaded Head |        | Beheading |        | Hanging |        | Total |        |
|------|--------------------------|--------|-----------|--------|---------|--------|-------|--------|
|      | Male                     | Female | Male      | Female | Male    | Female | Male  | Female |
| 1873 | 34                       | (4%)   | 709       | (74%)  | 218     | (23%)  | 961   |        |
|      | 33                       | 1      | 690       | 19     | 217     | 1      | 940   | 21     |
| 1874 | 14                       | (2%)   | 601       | (83%)  | 113     | (16%)  | 728   |        |
|      | 13                       | 1      | 585       | 16     | 109     | 4      | 707   | 21     |
| 1875 | 13                       | (3%)   | 371       | (82%)  | 68      | (15%)  | 452   |        |
|      | NA                       | NA     | NA        | NA     | NA      | NA     | NA    | NA     |
| 1876 | 7                        | (2%)   | 341       | (90%)  | 30      | (8%)   | 378   |        |
|      | 4                        | 3      | 334       | 7      | 28      | 2      | 366   | 12     |
| 1877 | 10                       | (7%)   | 101       | (75%)  | 24      | (18%)  | 135   |        |
|      | 9                        | 1      | 97        | 4      | 21      | 3      | 127   | 8      |

33) Sources: <1873 and 1874> Teduka, Y., *Yutaka Teduka Chosakushu Dai 4 Kan: Meiji Keihoshi no Kenkyu (Jo)* (Yutaka Teduka's Collection of Writings Volume 4: Study on the History of the Penal Codes in the Meiji Period (Part 1)) (Keio Gijuku Daigaku Shuppankai, 1994), pp. 301–302.

<1875> *Shihosho* (Ministry of Justice) (ed.), *Shihosho Dai 1 Kai Hokoku (Ministry of Justice First Report)* (Shihosho, year of publication unknown), p. 17.

<1875 and 1876> *Shihosho* (Ministry of Justice) (ed.), *Shihosho Dai 2 Nenpo (Ministry of Justice Second Annual Report)* (Shihosho, 1881), *Dai 3 Pen Keiji Sokei Yoshi* (Part 3, Criminal Statistics Summary), pp. 2–3.

<1876 and 1877> *Shihosho* (Ministry of Justice) (ed.), *Shihosho Dai 3 Nenpo Meiji 10 Nen (Ministry of Justice Third Annual Report: 1877)* (Shihosho, 1881), *Dai 3 Pen Keiji Sokei Yoshi* (Part 3, Criminal Statistics Summary), pp. 2–3.

<1877> *Shihosho* (Ministry of Justice) (ed.), *Meiji 10 Nen Keiji Sokei Hyo (Criminal Statistical Table: 1877)* (Shihosho, year of publication unknown), pp. 31–33.

All figures exclude death sentences for political crimes (*Seijihan*), which were passed on 13 persons in 1876 and 25 in 1877. Percentages are rounded off to one decimal place; therefore, the total can exceed 100%.

As Table 1 shows, the number of death sentences decreased each year. Beheading consistently accounted for more than 70% of the total number of death sentences. The proportion of exposing a beheaded head sentences were small; however, in 1877, they began increasing, and they showed no sign of abating. Meanwhile, hanging was far less common than beheading, as shown by the fact that in 1876, it accounted for less than 10% of death sentences. Table 2 shows the number of executions by method. The data begin in 1877.

**Table 2 Numbers of Executions by Method of Execution<sup>34)</sup>**

|      | Exposing a Beheaded Head |        | Beheading |        | Hanging |        | Total |        |
|------|--------------------------|--------|-----------|--------|---------|--------|-------|--------|
|      | Male                     | Female | Male      | Female | Male    | Female | Male  | Female |
| 1877 | 10                       | (7%)   | 101       | (75%)  | 24      | (18%)  | 135   |        |
|      | 9                        | 1      | 97        | 4      | 21      | 3      | 127   | 8      |
| 1878 | 18                       | (11%)  | 131       | (78%)  | 20      | (12%)  | 169   |        |
|      | 15                       | 3      | 124       | 7      | 18      | 2      | 157   | 12     |
| 1879 |                          |        | 135       | (88%)  | 19      | (12%)  | 154   |        |
|      |                          |        | 121       | 14     | 16      | 3      | 137   | 17     |
| 1880 |                          |        | 119       | (95%)  | 6       | (5%)   | 125   |        |
|      |                          |        | 111       | 8      | 6       | 0      | 117   | 8      |
| 1881 |                          |        | 93        | (97%)  | 3       | (3%)   | 96    |        |
|      |                          |        | 86        | 7      | 3       | 0      | 89    | 7      |
| 1882 |                          |        |           |        | 70      | (100%) | 70    |        |
|      |                          |        |           |        | NA      | NA     | NA    | NA     |
| 1883 |                          |        |           |        | 72      | (100%) | 72    |        |
|      |                          |        |           |        | 62      | 10     | 62    | 10     |
| 1884 |                          |        |           |        | 99      | (100%) | 99    |        |
|      |                          |        |           |        | 97      | 2      | 97    | 2      |
| 1885 |                          |        |           |        | 125     | (100%) | 125   |        |
|      |                          |        |           |        | 117     | 8      | 117   | 8      |
| 1886 |                          |        |           |        | 159     | (100%) | 159   |        |
|      |                          |        |           |        | 149     | 10     | 149   | 10     |
| 1887 |                          |        |           |        | 98      | (100%) | 98    |        |
|      |                          |        |           |        | 93      | 5      | 93    | 5      |

34) Source: Inmates On Death Row, 73 *Kensatsu Geppo* (Public Prosecutors Office Month Report) 1 (1955), pp. 9–11 (writer unknown).

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As Table 2 shows, in 1877 and 1878, when exposing a beheaded head was still being used, beheading accounted for more than 70% of death sentences. After exposing a beheaded head was abolished in 1879, the percentage of those who were executed by beheading increased to 80% and 90%. By contrast, the percentage of hangings decreased gradually, falling to 3% in 1881.

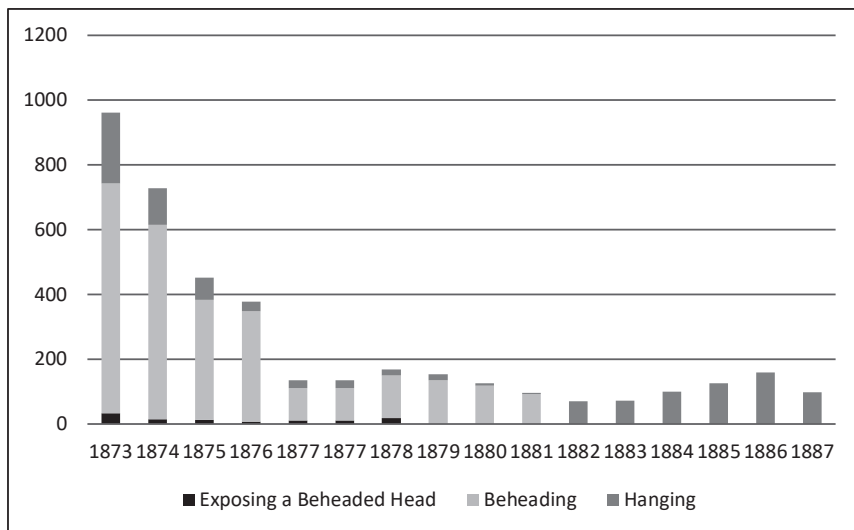
During this time, death sentences appeared to have been passed and executed on the same day.<sup>35)</sup> Therefore, as shown in 1877, the numbers of death sentences and executions are equal; therefore, Table 1 showing the number of death sentences and Table 2 showing the number of executions can be combined into Table 3. The data used in Figure 1 are obtained from Table 3. Figure 2 shows the percentages of the three methods of execution for each year.

**Table 3 Numbers of Death Sentences and Executions by Method of Execution**

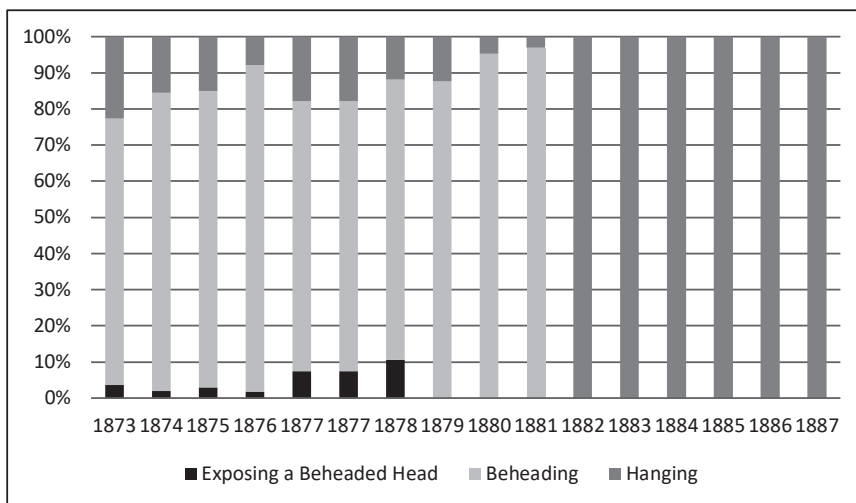
|      | Exposing a<br>Beheaded Head | Beheading | Hanging | Total |
|------|-----------------------------|-----------|---------|-------|
| 1873 | 34                          | 709       | 218     | 961   |
| 1874 | 14                          | 601       | 113     | 728   |
| 1875 | 13                          | 371       | 68      | 452   |
| 1876 | 7                           | 341       | 30      | 378   |
| 1877 | 10                          | 101       | 24      | 135   |
| 1877 | 10                          | 101       | 24      | 135   |
| 1878 | 18                          | 131       | 20      | 169   |
| 1879 | 0                           | 135       | 19      | 154   |
| 1880 | 0                           | 119       | 6       | 125   |
| 1881 | 0                           | 93        | 3       | 96    |
| 1882 | 0                           | 0         | 70      | 70    |
| 1883 | 0                           | 0         | 72      | 72    |
| 1884 | 0                           | 0         | 99      | 99    |
| 1885 | 0                           | 0         | 125     | 125   |
| 1886 | 0                           | 0         | 159     | 159   |
| 1887 | 0                           | 0         | 98      | 98    |

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35) For example, Kyoto Prefecture, established by the Meiji government, had conducted executions on the day the death sentence was passed since 1867. In December 1867 (date unknown), Kyoto Prefecture sentenced two defendants to exposing a beheaded head and seven defendants to beheading out of nine defendants who committed multiple robberies and thefts, and executed them on the same day the death sentences were passed. *Kyoto Fu* (Kyoto Prefecture) (ed.), *Kyoto Fushi* (*The History of Kyoto Prefecture*), Dai 1 Pen Dai 93 Go, p. 3. In 1867, administrative organs, not courts, handed down the death penalty.



**Figure 1 Numbers of Death Sentences and Executions by Method of Execution**



**Figure 2 Percentages of Death Sentences and Executions by Method of Execution**

Figures 1 and 2 show that, as mentioned, though abolishing beheading was discussed in a written statement from Senate *Genroin* in 1876, sentences did not necessarily become milder. Beheading accounted for an overwhelming share of death sentences, and few



hangings occurred before the Former Penal Code came into force in 1882, and its presence was extremely low. Moreover, this trend increased annually.

## 2. Reason

Why had few hangings been conducted until the Former Penal Code came into force in 1882? The main reason is that hanging was not stipulated as a statutory penalty for major punishable offenses in the Provisional *Ritsu* Penal Code, New *Ritsu* Penal Code, or Revised *Ritsu* Penal Code. Table 4 shows the number of death sentences according to type of offense. The data on death sentences according to type of offense begin in 1875.

**Table 4 Numbers of Death Sentences by Major Offense Type<sup>36)</sup>**

|      |       | Robbery | Murder<br>etc. | Beating<br>a Victim<br>to Death | Escaping<br>from<br>Prison | Arson | Other<br>Offenses | Total |
|------|-------|---------|----------------|---------------------------------|----------------------------|-------|-------------------|-------|
| 1875 | Total | 301     | 34             | 14                              | 24                         | 23    | 56                | 452   |
|      |       |         |                |                                 |                            |       |                   |       |
|      |       |         |                |                                 |                            |       |                   |       |
|      |       |         |                |                                 |                            |       |                   |       |
| 1876 | Total | 290     | 30             | 0                               | 6                          | 23    | 29                | 378   |
|      |       |         |                |                                 |                            |       |                   |       |
|      |       |         |                |                                 |                            |       |                   |       |
|      |       |         |                |                                 |                            |       |                   |       |
| 1877 | Total | 23      | 47             | 0                               | 0                          | 38    | 27                | 135   |
|      |       |         |                |                                 |                            |       |                   |       |
|      |       |         |                |                                 |                            |       |                   |       |
|      |       |         |                |                                 |                            |       |                   |       |

As shown in Table 4, robberies accounted for 67%, 77%, and 17% of death sentences in 1875, 1876, and 1877, respectively. The Revised *Ritsu* Penal Code, in effect at that time, distinguished between statutory penalties according to whether the defendant had committed armed robbery.

The statutory penalties for first-time offenders were as follows (*kaisei-shichizo-reizu* of the *shukan* volume of the Code; Article 127 of *zokuto-ritsu kaisei-gotoritsu* in the first

36) Source: <1876 and 1877> Shihosho (ed.), Shihosho Dai 2 Nenpo, *supra* note 33, Dai 3 Pen Keiji Sokei Yoshi, pp. 6–12, 32–34.

<1876 and 1877> Shihosho (ed.), Shihosho Dai 3 Nenpo, *supra* note 33, Dai 3 Pen Keiji Sokei Yoshi, pp. 37–39.

volume of the Code). In the case of armed robbery, if the victim died or was injured, or if the defendant obtained any property, she/he was sentenced to beheading. The defendant was sentenced to hanging if she/he was the principal offender when the victim was neither killed nor injured, and she/he obtained no property.

In the case of unarmed robbery, if the victim was killed, the defendant was sentenced to beheading. If the victim was injured, the defendant was sentenced to hanging.

As described above, in robbery cases—which accounted for 2/3, 3/4, and 1/6 of death sentences in 1875, 1876, and 1877, respectively—beheading was the penalty in many cases, and hanging was the penalty in only a few cases.

Thus, of the death sentences passed for robbery in 1875, 1876, and 1877, 94%, 97%, and 96% of the executed people were beheaded, and only 5%, 3%, and 0% were hanged, respectively.

Likewise, for murder and similar offenses—which accounted for 8%, 8%, and 35% of the death sentences in 1875, 1876, and 1877, respectively—beheading was the penalty in many cases, and hanging was the penalty in only a few cases (Article 160 and subsequent Articles of *jinmei-ritsu bosatsu-jourei* in the second volume of the Code).

Thus, of the death sentences passed for murder and similar offenses in 1875, 1876, and 1877, 74%, 70%, and 64% of the executed people were beheaded, and only 17%, 30%, and 32% were hanged, respectively.

Therefore, the Codes of this period did not provide for hanging as a statutory penalty in major punishable settings, and hanging was thus used infrequently.

### 3. Conclusion and Future Research Topic

Hanging had not replaced beheading before the enforcement of the Former Penal Code in 1882. The percentage of hangings among methods of execution first decreased gradually, and then became smaller.

To use a theatrical metaphor, hanging had long played a supporting role, appearing behind other actors among methods of execution. Hanging was relegated to the wings of the stage each year. However, hanging was suddenly put in the spotlight in 1882 because the other actors were dragged off the stage.

Therefore, had hanging, which suddenly became the leading actor after being a supporting actor among methods of execution, performed well? In other words, had hangings been carried out smoothly, without being botched?

I will discuss this issue in detail in another paper.