

The Right to Life in Japan

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I have for some time been involved in research on fundamental human rights in comparative and international law. My most recent study has concentrated on the right to life. A recent work, *The Right to Life in Japan* (published by Routledge in the University of Oxford's Nissan Institute of Japanese Studies' Japanese Studies Series), for example, focused on *inter alia* the protection of the constitutional right to life provision of article 13 of the Japanese Constitution, a provision which confers on this right (in addition to the individual's right to liberty and to the pursuit of happiness) an eminent position in that it is to receive supreme consideration in legislation and other governmental affairs, providing it does not interfere with the public welfare.

Any work on fundamental human rights begs a number of questions. In the context of the right to life, obvious questions that come to mind include : what do we mean by 'right'? ; how do we define 'life' in the expression 'right to life'? ; what is the scope of the right to life? ; what is the relationship between the right to life provisions in international law instruments and right to life provisions in national constitutions? ; has the right to life absolute value in domestic and international law? ; to what extent, if at all, should traditional values override any right to life constitutional provision? ; and has the state the right to deprive an individual of this constitutional right?

Each question raises new questions, adding further complication to an already—difficult area of legal study. Thus, for example, a definition of 'life' as a state of functional activity and continual change before death (not, of course, the only available definition) begs the questions : when does life begin in law for the purpose of protection by the constitutional provision? ; when, for the same purpose, does it end? ; what do we mean by 'functional activity', and how does brain death, for example, fit into the picture? All such questions need concrete answers at the end of the day, for the theme of this research—life—is at the core of human existence. If we take the pre—birth /birth boundary of life as an illustration, *when* a foetus becomes the object of legal protection can greatly affect the life potential of the foetus, not to mention the well—being of

those involved with its birth or death, as the case may be. The boundaries of life need legal definitions, which often follow clinical ones. It is generally true to say that most legal systems developed concrete definitions of birth ahead of death; of the latter, many countries have yet to adopt a legal definition of death. Whilst discussions on brain death have not directly related the problem to the issue of the right to life *per se*, the effect of formulating a legal definition in terms of brain death (or otherwise) is to also define in concrete terms the scope of the right to life provision. Where no legal definitions of death and of birth exist, so too no precise parameter within which to locate the right to life can be said to exist.

In my study on the right to life in Japan, I have approached this right from an essentially legal viewpoint *via* a broad cluster of 'life' issues, including abortion, suicide, capital punishment, and death from overwork. Following a discussion of law and rights in Japan from a historical perspective, the study examined the question of what life is in contemporary Japan and focused on problematic areas which have arisen in life issues, including infringements of the right to life within the modern company organization, and by the state, as well as the question of the equality of the right to life.

The study focused particular attention on two elements which arise from the constitutional provision on the right to life. First, has the sanctity of the right to life supremacy over other values? As Japan has the cultural tradition of acknowledging sacrifice as a moral value and of appreciating idealized ways of death, the extent to which the modern Japanese Constitution recognizes the sanctity of the right to life becomes a fundamental question to be answered. How far have traditional values in Japan given way to the constitutional provision? Second, do all individuals possess an equal right to life?

To turn to the second question first, an examination of the inequality of the right to life inherent in articles 200 (crime of murder of lineal ascendants) and 205 (2) (crime of injury resulting in the death of lineal ascendants) of the Criminal Code—now of historical interest given their recent repeal—revealed discrepancies in sentences reflecting the different value placed on the lives of lineal and non—lineal ascendants / descendants. Based on the deterrence theory and on the adverse feelings of the Japanese towards crimes and acts which run counter to the concept of filial piety, added protection was afforded the lives of lineal ascendants. The state has a duty to operate an effective

law against murder and behaviour likely to endanger life. But does it have the right, in the process, to discriminate between different categories in respect of the right to life?

The present author argued that, whereas the provisions of article 199 and 205(2) clearly reflect connection between law and moral opinions, the claim that connection similarly exists between law and moral truth is more difficult to justify, and on three grounds. First, the type of filial piety which underlay the legal prescription— the duty of descendants to their ascendants— is not a universally— accepted moral. Second, the situation in reality in Japan casts doubt on the contention that the type of filial piety reflected in these articles constitutes moral truth. The third ground relates to the relationship between law and justice. If the purpose of law in adopting such moral principles as filial piety is to bring about justice, any resulting injustice brought through such adoption necessarily relegates it to something less than moral truth.

Viewed from a 'Western' perspective, filial piety can be viewed as a tool which operated a legal inequality in respect of the right to life. When law uses filial piety to infringe upon the equality of the right to life, filial piety— viewed from this perspective— cannot avoid acting as moral prejudice against the constitutional provision.

As to the status of traditional values *vis-à-vis* the constitutional right to life provision, the study demonstrates how, in the family and corporate arenas, the right to life can— and does— subordinate to the general welfare of Japanese society in both theory and practice, and that there exists in practice the disturbance of rights (including the right to life) in the context of social institutions and organizations. In both the family and company, the individual tends to be viewed not as an individual *qua* individual, but according to his/her position in relation to other members of the social unit. In the context of the collective and institutional injustice in the family and company groups, the right to life of individual members not infrequently has a lesser value than familial and corporate interests. The source of the 'problem', it is argued, lies in the hierarchical structure which has been built into the traditional Japanese family, as well as the company organization. There exist an in— built imbalance of 'rights' already incorporated into each position and role within these groups. The subordinate position of the right to life *vis-à-vis* both the general welfare and the interest of the group is a reflection of, and is made possible by, the general perception of the relative (rather than absolute) value of life itself in Japan.

As with the earlier two attempts to modify foreign ideas to suit Japanese taste (first with the introduction of the Chinese *lü–ling* system, and second with the introduction of the Roman law system during the Meiji period), the foreign concept of the right to life (introduced with the promulgation of the present Constitution) has been modified in the course of internalization both by structures inherent in Japanese society and by that society's tendency to emphasize particular social nexuses which stand against the right to life provision. Being influenced so, it has become possible for infringements of the constitutional provision to occur. For Japanese law, the value of life itself is not absolute, and the legal position reflects Japanese values generally.