

**PRISON LITERATURE IN DEFENSE OF A SENTENCED TO
DEATH DEFENDANT IN JAPAN – *TEARS OF IGNORANCE*
BY NORIO NAGAYAMA**

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ABSTRACT: In the 1960s, Japan was in a fast economic growth and there was poverty in every corner of the country. Norio Nagayama, a sentenced to death defendant was born in a poor and dysfunctional family and is an example of a criminal who was influenced by such context. Spite of the lack of his poor schooling, Nagayama was a self-learner in the prison time and succeeded in his literature career which culminated with the Japanese New Literature Award in 1983, and became notorious due to the crimes which he committed as well as to his literature legacy during his life in prison. He was arrested after committing four murders in 1968, and his case set new milestone criteria for death penalty conviction in Japan. The present article intends to analyze the influence of his first work, *Tears of Ignorance*, published in 1971, in his defense presented in court which decided for his execution in 1997. This work is a compilation of his notes of poetry and prose with direct reference to his childhood and youth events, social justice ideas, and above all, it is related to his inner trip to seek for the motivation of his crimes. In order to analyze his work, an examination on the persistence of death penalty in the Japanese System has a pivotal importance to get a greater understanding of the author's context.

KEYWORDS: death penalty in Japan; prison literature; defense.

INTRODUCTION

Norio Nagayama was born into a poor family, and had seven siblings and a gambling father. His mother has abandoned him in Abashiri in the province of Hokkaido with his younger siblings, in an attempt to support

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her other children in Aomori. Despite the troubled childhood and youth, Norio Nagayama became an awarded and best-selling writer during his prison days (Otani, 2010, p. 34). Born in Abarishi, Japan, in 1949, Nagayama was initially known for his murder spree, he committed murder four times between October 11 and November 5, 1968. The victims were two guards and two taxi drivers, killed in different cities (Ishikawa, 2013, p. 5).

These crimes drew attention to social problems in Japan during the economic growth period, and their impact was so great that established a new criteria for death penalty in the country. When Japanese society was emerging in the post-war period, a great number of poor youngsters, who were called “golden eggs” like Nagayama, usually in high school level, would leave their hometowns to work in Tokyo and other promising capital cities.

The context of poverty and lack of perspective is in his first published book, *Muchi no Namida (Tears of Ignorance, 1971)*, in which the author attempts to justify the reasons for his own delinquency, blends verse and prose in sparse texts whose topics involve his search for his crime motivations. The same argumentation line of the book is used in the court sessions he faces through many years. The narrative focuses on his miserable past, as if his free will had been seriously damaged by all the traumatizing experiences he lived before his crimes. Nagayama wrote nine books², one of which received the *Shin Nihon Bungakusho* (New Literature Award), in 1983 – *Kibashi (Wooden Bridge)*, published the following year. The earnings of his books were donated to the families of his victims and to charities in Peru³. Nagayama was executed in 1997, at the age of 48, after several attempts of clemency request.

² *Muchi no Namida* (Tears of Ignorance, 1971), *Ai ka Mu ka* (Either Love or Nothing, 1973), *Kibashi* (Wooden Bridge, 1984), *Soren no Tabigeinin* (The Soviet Union of the Travelling Artist, 1986), *Sutego Gokko* (The abandoned child, 1987), *Shikeino Namida* (Tears of Death Penalty, 1988), *Nazeka Umi* (Don't know why the Sea, 1989), *Isui* (Other waters, 1990), *Hana* (Flower, 1997).

³ Nagayama chose children of Peru because of an article from 1997, in the *Asahi* newspaper, which mentioned child labor in the country, entitled “Litter workers that commit”. The copyright was donated to Manthoc, an NGO that promotes children human rights in the Andes, created in 1976.

In this study, the life and work of Nagayama in prison are analyzed, as well as his view of criminal responsibility, as depicted in his first published book. Besides, the influence of his work in his court defenses will be investigated. Hence, it seems fundamental to examine the permanence of death penalty in Japan for achieve a better understanding of the context of the author.

This study was developed from the primary source, *Muchi no Namida* (*Tears of Ignorance*, 1971), and from the literature review of books and articles related to death penalty in Japan and Nagayama's life.

NAGAYAMA'S PUBLISHED WORK AND LAW IN LITERATURE

Japanese literary genre *Watakushi Shôsetsu* can be translated as "narrative of the self" and has its origins in the beginning of the 20th century. There was a certain concern by Japanese scholars about the lack of structure and the absence of creation of a main character, which could lead to the destruction of the literary development in Japan (Nagae, 2006, p. 4). The work of Nagayama belongs to such genre and, in *Muchi no Namida*, the narrator is the main character.

Since Nagayama had a harsh experience with the reality of death penalty in Japan, it is necessary to analyze the connection between his literary production and the criminal justice system in Japan. His regular contact with defense attorney and the daily life in prison certainly influenced his writing, but he does not directly mention his trial; rather, he attempts to uncover what could have led him to develop hatred towards society.

In order to understand the link between his book and Law, it is important to analyze Law and Literature studies, which date from the 19th century, when articles of English lawyers were published, and whose contents described the portrayal of the criminal system as in the works of Dickens, Shakespeare and others. However, it was only in 1973, with the literary work of James Boyd White, *The Legal Imagination*, that Law and Literature became an autonomous field of study. So far, it consisted of

reminders that law was a constant theme in literature and that legal opinions could have a certain literary character (Posner, 1986, p. 1392). Law and Literature studies can be classified into two major modalities: “Law in Literature” and “Law as Literature”. In the former, legal order and its application are represented in the literary world – examples of such focus are seen in classical works such as Sophocles’ *Antigone*, Dostoyevsky’s *Crime and Punishment*, Kafka’s *The Trial*, among others. “Law as Literature”, in turn, is applied in all sorts of laws and cases, and its value for society can be discussed, which allows one to deeply think about human beings and their communities (Chang, 2008, p. 68-69). Interpretation is, thus, an interference over legal practices, as it is made clear in studies about meaning discovery in different books (Godoy, 2003, p. 133).

The study of Nagayama’s literary work is in the “Law in Literature” category, because his production denounces delinquency as a result of social inequality. In this case, Law is represented according to the conditions which led him to commit crimes, and in the persistence of maintaining death penalty in the criminal system in Japan, once Nagayama was a symbol for death penalty opponents in Japan. Literature is represented by the narrative of his work in his defense which consists of an attempt to gain sympathy from the public opinion in the country, especially with *Muchi no Namida (Tears of Ignorance, 1971)*. This book was the first step towards the creation of a narrative world by the writer, and gave him the means for having control over his own ghosts as well as to search for the cause of his crimes. Literary works, as opposed to legal works, can break paradigms, since they have no commitment to reality and are written for common readers (Trindade, 2012, p. 3). His fiction, however, is not on the opposite side of reality, as his writing combines memoirs from outside of prison and his dreams of an ideal crime-free society.

Nagayama narrates his own version of the facts in *Muchi no Namida* and denounces the criminal system as an imperfect one, which judges people by their wrongdoings and the immediate causes, ignoring long-

term motivations, the real origins of criminality. Nagayama's novels gain the reader's empathy by the description of his situation, which demonstrate his integrity as a human being (Tamagnone and Oliveira, 2013, p. 35).

Furthermore, his work has served as an inexhaustible source of inspiration for discussions about regeneration of criminals since he studied and became a writer after his conviction, when he acquired a solidary spirit and critical consciousness. His life and work are inspiration for NGOs that advocate the elimination of death penalty and the improvement of life conditions in detention centers⁴.

His defense in the novel *Muchi no Namida* resulted in favorable results, as the decision by the Supreme Court of Tokyo commuted his death penalty conviction to life imprisonment sentence in 1981: "The government should have spared the defendant from poverty and it would be unfair to ignore the absence of appropriate policies aiming for the well-being of the population, blaming him for everything" (Obara, 2013, p. 32). Despite the acknowledgement by the Court of the influence of the poor context Nagayama had lived and of the fact that such context was one of the elements which triggered his delinquency, the decision of the authorities was reversed once again and he was executed in 1997.

DEATH PENALTY IN JAPAN AND NAGAYAMA'S TRIAL

Japan is one of the very few developed countries that still have death penalty in the legal order. Even though the country maintains it⁵, the number of executions has visibly decreased in the past years. Japan ratified the Covenant on Civil and Political Rights (1966) in 1979, without

⁴ Amnesty International, Center for Prisoners Rights, International Federation for Human Rights, among others.

⁵ Other countries that, in October 2015, still have death penalty are: Afghanistan, Antigua and Barbuda, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Botswana, Chad, China, Comoros, Democratic Republic of Congo, Cuba, Dominica, Egypt, Equatorial Guinea, Ethiopia, Gambia, Guatemala, Guinea, Guyana, India, Indonesia, Iran, Iraq, Jamaica, Japan, Jordan, Kuwait, Lebanon, Lesotho, Libya, Malaysia, Nigeria, North Korea, Oman, Pakistan, Palestine, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Saudi Arabia, Singapore, Somalia, South Sudan, Sudan, Syria, Taiwan, Thailand, Trinidad and Tobago, Uganda, United Arab Emirates, United States, Vietnam, Yemen, Zimbabwe.

reservations. Despite not explicitly forbidding death penalty, this instrument stipulates in its art. 6(2), that the countries that still have this type of punishment in their criminal systems should apply it only on the “more severe cases”, and provides criteria for protection against life deprivation – art. 6(1) –, through competent courts, sets forth appealing procedures and human treatment for the convicted. However, art. 6(6) stipulates that “Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant”. Japan, however, has neither ratified the instrument for Death Penalty Abolition, nor the Second Optional Protocol to the International Covenant on Civil and Political Rights, which suggests its clear positioning for the maintenance of such penalty.

The current Criminal Code (1908) provides that the used method of execution is exclusively hanging (art. 11), the way which the author Norio Nagayama was executed in 1997. Currently, there are many crimes⁶ that

⁶ Crimes involving death penalty are murder: Killing another person is a crime punishable by the death penalty. However, in practical terms, Japan only imposes the death penalty if the murder is accompanied by aggravating factors, including multiple victims and other felonies (Criminal Code, article 199). Other crimes that result in death: Robbery followed by murder (robbery) robbery in the crime scene is punishable with death penalty (Penal Code, article 240); Concomitant rape to robbery causing death is punishable with death penalty (Penal Code, article 241); The pollution of public drinking water which causes the death of a person is punishable with death penalty (Penal Code, article 146); Causing the death of a person in the commission of a rollover or destruction of a train or tram or during the turn of a vessel (capsizing) that causes the death of a person is punishable with death penalty (Penal Code, article 126); Reckless driving, leading to the overturning of a train or tram or turn a vessel (capsizing) that causes the death of another person is punishable by the death penalty (Penal Code, articles 125-127); Participate in a duel that causes death is also punishable by death. Special Law: Crimes related to terrorism resulting in death; Hijack a plane to cause death and destruction of aircraft that results in death is punishable with death penalty; Crimes related to terrorism that do not result in death; Destruction by explosives and illegal use of explosives is punishable conducts with death penalty (Penal Code, article 117); Fire that does not result in death (Penal Code, article 108); Set fire to a building, train, tram, boat or mine where a person is or is used as a villa conduct punishable with death penalty (Penal Code, article 108); Treason (Criminal Code, articles 81, 82, 77 (1)-i); Instigate foreign aggression (Penal Code, article 81) against Japan also carries the death penalty Assisting an enemy through direct military. or that somehow enable military advantage is punishable with death penalty (Penal Code, article 82). to lead an insurrection is conduct punishable with death penalty (Penal Code, article 77 (1)-i); Other crimes not resulting in death; the following crimes are punishable by death: Give cause the flood that damaged a building, train, tram or mine that is used as housing or where people are present is punishable by death (Penal Code, article 119); Detonate explosive and thus damaging a building, train, tram, boat or mine that is used as housing or where other people are present is punishable by death (Criminal Code, articles 108, 117-1); Causing damage to structure not inhabited for violation of domicile

may involve death penalty, but in particular death convictions occur when the victim dies. This code is still in force, having Nagayama case established new sentencing criteria to death conviction, currently applied in the trials that may result the death penalty. In this case, the following factors are analyzed:

- 1) the nature of the murder;
- 2) motivation;
- 3) the method used in the murder;
- 4) the number of people killed;
- 5) the feeling of the victim's family;
- 6) the magnitude of the social implications of the case;
- 7) the age of the defendant;
- 8) the criminal history of the defendant;
- 9) the demonstration of remorse by the defendant (Otani, 2010, p. 200).

Executions are carried out when authorized by the Minister of Justice (art. 475 of the Code of Criminal Procedure), who decides the number of executions and indicates the sentenced person to be executed (The International Federation for Human Rights, 2003, p. 10). Once the Minister of Justice orders the execution, it should be carried out within 5 days. Art. 475 of the Code of Criminal Procedure requires an order from the Minister of Justice for the sentence to be executed, and, if the Minister decides not to give the order, the sentence is suspended. Between 1989 and 1993, there was a moratorium on executions because the Ministers of Justice during that period refused to order the execution.

In between the decisions of the Tokyo District Court and the Supreme Court, Nagayama's process lasted for eleven years, and during this period his capital sentence was commuted to life imprisonment sentence and then again reverted to death penalty⁷. Despite spending the

(Penal Code, article 119) Available at: <<http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=Japan>>. Access: 2 Oct. 2015.

⁷ JAPAN. Tokyo District Court. Death sentence, Tokyo, July 10, 1979; The Superior Court of Tokyo commuted death penalty to life imprisonment, Tokyo, August 21, 1981; The Supreme Court of Japan reformed the trial and returned the case to Superior Court, Tokyo, July 8, 1983; Court reformed the tried for death penalty, Tokyo, March 18, 1987;

biggest part of his life in prison, Nagayama got married to Kazumi, in 1981. Nagayama's wife was the daughter of a Japanese mother and an American father. Born in 1955, she had lived in the military base of Okinawa, moving, later, to the USA. Her interest for Nagayama aroused after she read *Muchi no Namida* repeatedly.

The execution was carried out on August 1, 1997, and Nagayama's attorneys were informed about his death only two days later. The date was chosen close to another case which caused a great uproar. That year, several crimes were committed by Japanese minors, such as the Sakakihara case, whose suspect was arrested on June 28, 1997 (Otani, 2010, p. 162). On the occasion of Nagayama's death, Amnesty International released the following note:

Four people were hanged in secret on August 1, including the well-known writer Norio Nagayama, who was in prison for 28 years. The four prisoners, all convicted of murder, appear to have been randomly selected among 55 prisoners whose death sentences have been finalized. As usual in Japan, they and their families were not previously informed about the executions. There was a woman among the four (*The New York Times*, 1997).

Organizations that fight death penalty point out that the sentenced people spend, in average, more than three decades waiting for their execution. The date of execution is neither informed to the convicted nor to the family. Thus, not knowing when they are going to die, many people sentenced to death develop mental disorders.

The government has been obtaining high numbers of approval of death penalty, around 85.5% in 2009 on grounds of public opinion polls. (Obara, 2013, p. 60). Authors like Sato (2013, p. 3 4) highlight that the abolition of death penalty is hindered by the lack of political will from the bureaucratic elite of the country, which adopts preventive policies, as well as deontological view, in the penal system. The preventive character occurs when the penalty is cruel enough for the individual to make an utilitarian calculus that abstains him from the criminal act. Thus, death

04/17/1990 - The Supreme Japanese Court upheld the decision of death penalty, Tokyo, April 17, 1990.

penalty would curb criminality. Likewise, the severity of the sentence aims at causing fear and preventing the offender from being released and becoming a repeat offender (Geis, 1955-56, p. 166). From this perspective, the life of the criminal is sacrificed for the sake of other individuals in society.

Deontological ethic, in turn, enhances the concept of duty and only then considers the consequences of actions. One of its greatest representatives is Immanuel Kant, who argues that the punishment should be a response to guilt. It must occur so that justice and equality may exist. Kant also defends equality in the areas of crime and punishment: the criminal should support the same amount of pain that what was ascribed to the victim. As no one forces a person to commit crimes, if they do, they must be willing to receive the same treatment; although it retributes the crime, it is not considered a form of revenge (Potter, 1998, p. 173). Thus, the Japanese government has defended the maintenance of the sentence using also such theories.

MUCHI NO NAMIDA (TEARS OF IGNORANCE, 1971)

Nagayama finished only Middle School, but, once in prison he became an avid reader of Psychology, Philosophy and authors like Dostoyevsky, Chekov, Marx, among others. His ability of expressing himself has progressed to such an extent that the associate judge of Tokyo District Court, Akira Toyoshi, who sentenced Nagayama to death, stated he had started to notice considerable changes regarding the defendant's behavior during trial sessions. If, at first, he did not know many subjects, he improved his knowledge of Philosophy and Literature: "Honestly, it was more than once that, before my decision, I was in doubt whether the defendant should be sentenced to death. I believe the Supreme Court had made a good choice when they created the 9-factor criteria for death penalty" (Métraux, 2009, p. 287).

In the beginning, during the audiences, Nagayama remained quiet most of the time, and did not even speak to his attorneys (Otani, 2010, p. 40). Such absence of expressive demonstration was due to an inverted

process of learning language. In general, children learn primarily to speak with family members and progresses on to writing, through reading at school. Thus, learning derives of an imitation and repetition process so that, in an almost mysterious way, children learn peculiar manners of expressing themselves (Hosomi, 2010, p. 140).

Nagayama, however, was abandoned by his mother when he was a little child and was mistreated by his siblings, to whom he barely talked, having had, hence, compromised language learning, whose deficit he tried to overcome in prison, where he fiercely dedicated to the studies. Such thirst for overcoming ignorance is noticeable in his peculiar writing style; for example, he exaggerates in using *kanjis*⁸, even when the word should have been written in *hiragana*.⁹ After being arrested, he had to face himself for the first time after being deprived of freedom. As he was not proficient in the written language, he dedicated to learning words and enlarging his vocabulary range, by studying and memorizing them from the dictionary and then rewriting *kanjis*. That way, he tried to escape his miserable condition through intellectual development and, in such a cognitive process, he started to dream about his social transformation.

The notes left in his drafts make it clear that he seriously practiced writing *kanjis*, in a way that he reached a vocabulary level that allowed him to write down novels. However, in spite of developing writing, the same did not apply to speaking, considering that the vocabulary he acquired was strange to a daily-basis language (Yakushiji, 2006, p. 238).

As a result of all his studies, Norio Nagayama's first novel, *Muchi no Namida*, is published by Godo publisher, in 1971, and then by Kadokawa Bunkô and Kawade Shobo Shinsha publishers, and becomes a best-seller. It is a collection of poetry and prose, with various thematics that show above all, his belief that ignorance and poverty are the biggest reasons

⁸ Japanese characters derivated from Chinese ones, used to write in Japanese language together with the katakana and hiragana syllabaries.

⁹ One of the syllabic alphabets in Japanese, used for every word with inexistent or unused kanji.

why people commit crimes. The novel is also composed by poems that illustrate his everyday life in prison, his childhood memories, criminality in society, among other themes. It is divided in the following chapters: 1) There was a person who only thought about death; 2) Words and water that were different within myself; 3) Wrath, hatred and love; 4) The song of the worm; 5) The brightest place is the one that becomes the darkest; 6) For your revenge; 7) The child thinker; 8) The lonely rebel; 9) Hunger desires the unknown; 10) Approaching the ego. The main objective of the novel is the search for the motivation of his crimes and by stating so, it gains importance in the discussion of criminal responsibility. Despite the fact that the questions deal with his childhood years, the author never talks about the crimes he committed:

I am a prisoner who killed four people. I believe it is not possible to forget murder, but, anyhow, I do not have the intention of touching that matter in the book. This notebook will become useless if I remember it (Nagayama, 1990, p. 11).

Throughout his literary life, which lasted for almost three decades, Nagayama only superficially refers to his crimes.

It seems that the crimes' memory affects his self-acceptance, which makes him maintain the "I do not want to touch", "I do not want to recall" position on the matter (Hosomi, 2010, p. 153); however, when the topic emerges, it is in the form of an almost pathetic self-explanation:

I killed people. If I had to think of it now, if I should say it or not, it was a special way of killing. People talk about perversity and cruelty [...] but, when they commit suicide, for example, using a pistol, they aim at the brain. They want to die quickly. When I think about existence, I am sure that my killing methods are a cruelty model, but I believe intellectual people are able to understand it. If I should summarize it in few words, it is the fact that I killed in an easy way. Death shall come without suffering (Nagayama, 1990, p. 240).

The comparison between suicide and homicide does not consider the autonomy of the individual, and Nagayama does not take into account the fact that in suicide, people commit an act against their own life and not

someone else's¹⁰. Taking the life of somebody is the worst kind of atrociousness: curiously, Nagayama, in this account, forgets to talk about the implied cruelty on the way he is going to be executed. Such question was discussed by the Supreme Court of Japan when they examined the application of cruel punishment regarding what the art. 36 of the Constitution provides: “The imposition of torture and cruel punishment by any public official is absolutely prohibited”. However, the constitutionality of the sentence was confirmed by the decision of the Supreme Court of Japan in March 12, 1948, which took into account the execution mode, not the loss of life¹¹. According to the view of the Court, hanging is not a cruel method of execution, as would be beheading, boiling, crucifixion and other methods used in the past.

The interpretation of responsibility in *Muchi no Namida*

The moment a “criminal act” happens is only an instant in the life of a person – the rest of the time, this person is a common citizen. Why? What reflects the moment the crime was committed? According to Nagayama, crime is nothing more than an abnormal action that occurs in a second and, thus, to judge a criminal based exclusively on such moment fosters prejudice. However, the instant ends up reflecting upon the whole period afterwards, not including the crime itself (Takeda, 2010, p. 54). Such line of thought about the act in itself is quickly substituted by his deep search on the causes of committing his crimes. Nagayama questions himself in the following way:

I found out. My own ignorance and then such discovery are due to the little study I have been taking in prison, now... If I should conclude in few words the reason why I became like that, every, every, every single thing is because of my miserable life. Ignorance appears from poverty (Nagayama, 1990, p. 230).

¹⁰ The concern with harming others is common in the Japanese culture and, depending on the suicide way, for example, if the individual play in front of a train, the family of the suicidal has to compensate train or Subway Company, since the company and users are hurt by the strike.

¹¹ JAPAN. Supreme Court decision, Tokyo, March 12, 1948.

Similarly to that, the author spoke during the session of his 12th audience at Tokyo District Court, on June 30th, 1970:

Defendant: You know about my origin very well. The facts happened because at that time I was ignorant. I was poor and ignorant ... A man like me is only here for being poor. I hate that. I committed the crimes because I hate.

Judge: Who do you hate?

Defendant: I hate anything. I hate everyone! And he kept talking in English: "The poor people assassinate social sense, destroy relations between people." Capitalist society creates the poor and that's why I'm here! (Otsuka, 1997, p. 82).

Everyone got surprised fact that a Middle-School youngster could speak English during the audience (Saki, 1994, p. 72). Nagayama had strong beliefs that he was a victim of circumstances, that his social environment from childhood pushed him to marginality, feeding himself with a radical determinism. If one should believe that human actions are consequences of the circumstances, people would not really be responsible for the things they do; should one state that human relations are really influenced by heredity and external circumstances? Despite the exhaustive work of psychologists, sociologists, neurologists, there is still a lot to be discovered in this area (Onoré, 1998, p. 181). The excluded people of society interpret things that way because, fundamentally, they feel like not having control over their own lives. That is why they believe that, if society improved, crimes would disappear. It is likely that such perception is mistaken, since the important thing is to be aware that there is a bigger world than our own selves and that we belong to it (Iguchi, 1988, p. 79).

It is true that criminal law and morality treat agents as victims of circumstances as long as that prevents the agent's ability to make a rational decision. When a person has a reduced capacity and commits a crime, the weakness is taken into consideration, although it is not possible to prove that the criminal behavior was caused by this deficiency. In this case, the capacity is taken into account by the principle of retribution, because the punishment should not be disproportionate to the guilt (Onore, 1998, p. 184).

Nagayama underwent two psychiatric evaluations to check if he had any mental illness. The first one, conducted in 1971, testified sanity, thus he would be chargeable, an opposite result of that from the second review, conducted between 1973 and 1974, which showed a decrease in his mental capacity. Although the second examination was much more detailed and carried out over a longer period, the judge chose to discard it, as it was contradicting the statements collected during the investigation of crimes (Otani, 2010, p. 138). Therefore, Nagayama was considered attributable and sentenced to death – however, in the Supreme Court of Tokyo, which would commute the death penalty to life imprisonment in 1981, the judge recognized that the State should have promoted policies to people's well-being (Obara, 2013, p. 44). This decision was reversed, and Nagayama was eventually executed.

In his work, Nagayama mourns his miserable life and creates hypotheses - building, poetically, a map of the "ideal society" - that would make it possible to eliminate crime or, in a more realistic perspective, reduce its occurrence:

There are no poor people under socialism
Everybody is bonded when life is hard
When politics are fragile everybody listens
No one escapes from this group
In Japan also that day will come
And then, the country will change and there will not be
people like me
People!
Do not make my outcry be in vain
I fell into inhuman conditions, but you are humans still
Do not make my cry be in vain
Or or
Will you still let a second case like mine happen?
That's sad, is it not? (Nagayama, 1990, p. 69).

Nagayama, thus, dreams of a society without social and economic inequalities. Every crime has a cause, motivation and results. The cause is the way each individual establishes their social and human relationship with society. The motivation arises from the peculiar conditions that the individual has in social relations that lead him to the crime. The result is crime as a social and universal phenomenon (Takeda, 2010, p. 60).

Nagayama believes that crime should be evaluated according to all these factors; in law enforcement, the criminal process focuses only on motivation and results. In addition, the writer argues that if only motivation is taken into account – for instance, the greed for money, hatred, etc. – crimes will continue to happen: crime comes from inadequacy situations at home, in the public education and in society as a whole.

Death penalty, however, is not meant to judge the situation of society. It emphasizes that the convict is guilty of threats to society, that the victim's family deserves to be avenged, that the elimination of the executioner will make society safer, proving thus the ineffectiveness of the educational punishment system.

CONCLUSION

Nagayama was a symbol of fight for the abolitionists of the death penalty in Japan. After entering prison, he spent his time studying and writing, and then donated the profits from his books sales to the victims' families. He showed regrets for his crimes during his lifetime, but this change was not convincing to spare him from execution. If this drastic change occurred in nearly three decades in his time in prison was not enough to keep him alive, one could argue that the Japanese criminal justice system prioritizes the removal of undesirable elements of society and the spirit of revenge of the families of the victims. Hence, it is not based on the rehabilitation and regeneration of the convict, a principle adopted in most countries today.

The development of his language occurred inversely to common people, since he first mastered the written language and then developed the ability to express himself orally. It would not be an overstatement to say that his writing was born only because of his condition. Paradoxically, while Nagayama avoids referring to the traumatic memories of the moments in which he committed the crime, his existence as a writer was on account of his imprisonment. In confinement for the first time, he had to face the traumas experienced in youth and the inability to express his feelings by making use of plausible expressions and promote good

communication. He tried to escape from his reality in prison through creative activity and chose a life of overcoming challenges instead of inertly waiting for his execution.

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