

# A Study on the Possibility of Legalizing Euthanasia in Japan

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## Introduction

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## Introduction

In this paper I will discuss the issue of euthanasia in Japan. Today, in most countries, euthanasia is illegal, and this is true in Japan as well. Yet I strongly believe that euthanasia should be legalized. To support this stance, I will first compare the current Japanese situation with the situation in Australia, where euthanasia is soon to be legalized. I shall utilize a survey that I conducted in both countries, the analysis of which will demonstrate the general perception toward euthanasia.

Thanks to the developed analgesic treatment, majority of patients today can spend their lives without pain. However, this is not true for all patients; approximately 10% of patients cannot avoid severe. What is worse, there are quite a few numbers of patients who suffer from side effects caused by medication: for instance, sleeplessness, nausea and vomiting, or even fecal incontinence. In these

cases, patients may feel that their dignity is impaired, to the extent that life becomes insufferable. Needless to say, however, they do not have a right to end their life, even when they no longer wish to live. On the contrary, there are lots of ways to prevent patients from dying by resorting to the so-called life-prolonging treatments. These treatments are aimed at postponing death for those people who can recover, even if only temporarily.

In general, in Japan, these actions must be taken, since they constitute the core of doctor's professional ethics based on the imperative to save lives. However, this is not the case in Australia. Doctors will think over the most beneficial ways for patients. A person nor decision-maker have no right to propose other treatments, hence they need to obey the doctor's treatments.

There are people in the world who find their harsh lives insufferable. But they usually cannot resort to euthanasia, as it is illegal in most cases. Except for passive euthanasia, euthanasia is at present illegal in most countries.

According to the "final exit", passive euthanasia can be only applied to patients on life-support machine. And for the approval of passive euthanasia, certain conditions need to be fulfilled; most notably the patient's prior consent in the form of a signature in a living will indicating the denial of terminal care when the patient is no longer able to decide for him or herself. And patients also need to sign in the permanently healthcare proxy: one of legal proxies that set who will make decisions in medical treatment and make sure of the living will is done by the doctors. Needless to say, there is no matter legally and ethically for this action.

In addition to the above, there is another kind of euthanasia called "active euthanasia". it is to commit suicides or ask someone to do that. The ways of active euthanasia are sundry, yet ingesting lethal drug is the most famous way. Sometimes, this is carried out by the patients themselves. But since this often proves difficult, it is more common to seek the assistance of someone else for going through this process. It is a well-known fact that this kind of euthanasia is illegal and controversial, yet my study suggests a strong case for legalizing euthanasia.

## I Euthanasia in Japan

In Japan, the notion of euthanasia was first acknowledged in the nineteenth-century when a book entitled *Ikai* (written by a German physician named C.W. Hufeland) was translated and published by a *Ranpoui* (a doctor who studied Western medicine in pre-modern Japan). By the end of Edo, Hufeland's view came to define Japanese doctors' professional ethics. According to this view, euthanasia was an irresponsible act that doctors were strongly advised to avoid.

This idea had lasted until the 1960s when the civil rights movement was taking place in the US. People started to regard medical treatment as one of the services that patients had the right to choose from. For instance, the idea and practice of informed consent became increasingly important.

In the early 1980s, hospital doctors in Japan had to follow a certain kind of manual. According to this manual, doctors must respect the rights of their patients. Ancillary to informed consent, owing to the movement, patients in Japan began to demand rights to decide their future including euthanasia.

Despite this movement, however, euthanasia is still illegal in Japan. The existing Japanese criminal law clearly states that a person who aids and abets suicide or instigates and who is asked by someone or even the patient to kill or with the patient's approval will be punished.

This is the sentence,

Article 202 A person who induces or aids another to commit suicide, or kills another at the other's request or with other's consent, shall be punished by imprisonment with or without work for not less than 6 months but not more than 7 years.<sup>1)</sup>

This being the case, however, there are some exceptions, such as those indicated in the clause below.

First, patients are suffering with intolerant pain

Second, the death is unavoidable and will take actions immediately

Third, there are no other ways to relieve the patient from his or her pain

Forth, the patient clearly insists his or her desire to die

Doctors must not euthanize patients without all these rules <sup>2)</sup>

These clauses may leave some scope for permitting euthanasia especially when an emphasis is placed on self-determination. A strong case for euthanasia may be derived from a theory of self-determination. If patients are terminally ill and lacks any prospect of recovery, it would seem not unreasonable to suggest that euthanasia is one form of decision that concurs with self-determination.

Hence Japanese courts seem less reluctant to admit euthanasia so long as all the strict conditions mentioned above are met. There was a case in Yokohama district court that accepted euthanasia in Japan. At the court, the court said the exemption that I wrote above so that the court accepted euthanasia as a principle of law of emergency evacuation and a right of self-determination. Despite this, however, euthanasia is in principle illegal in Japan. The often invoked rationales are many and varied. One of them is that it serves as a kind of buck-passing for doctors. Pain is not easy to measure objectively, and there is also the problem related to the shortage of knowledge or lack of effort. In any case, it would be important to inform and educate doctors on these matters. Another problem associated with euthanasia is that it complicates the issues surrounding inheritance, which is also related to the fact that living will is not legalized in Japan. This is further compounded by the lack of knowledge about euthanasia among most Japanese. One might argue that there are guidelines concerning terminal care and how to deal with it from the perspective of medical practice. They outline when the practice should begin or be suspended, with the decision being left mainly to the patients with possible collaboration of a team of medical practitioners. However, this has no legal validation and if the patients lose their consciousness, doctors will no longer be able to continue the practice.

People who disagree with euthanasia insist on these points and it is understandable. However, there are cases in which patients lose their will to go on living, when they cannot lead a healthy life. According to the Japanese Ministry of Health survey: the average life span comes from *kouseiroudousyo* “heisei22nenkanzenseimeihyo” and the health expectancy are from *kenokujumyonio*

*kerusyouraiyosokutoseikatusyukannbyotaisakunohiyounikansurukenkyu*, there are gaps between average life span and health expectancy: it is that the length of life when people can live by themselves. This gap clearly means that there are numerous people who fall under this category. When we take this equation into account, we must do something to resolve the issue. There are therefore people who call for the legalization of euthanasia, since they believe it can relieve people of extreme misery. This opinion is based on humane consideration and right of self-determination. As for the former, its aim is to relieve patients from pain which can be physical as well as mental. The latter point emphasizes the importance of determining one's life for oneself, and it argues that this includes a right to die.

## II Euthanasia in Australia

In 1995, Australia's Northern Territory became the first region to approve a right to die. This was promulgated as the Rights of the Terminally Ill Act 1995 (NT), which enabled patients to take assisted suicide and active voluntary euthanasia.

It is easy to imagine how the legalization caused a stir not only in Australia but also all over the world. Politicians, religious groups, healthcare professionals, "pro-life" and "pro-choice" pressure groups, academics, the media and members of the general public argued about the legalization, before and after euthanasia was legalized. While the argument continued, the law was repealed a year later by the Australia Parliament. In Australia, the Commonwealth had a power to alter the state legislation, as stated in article 122 of the Constitution, which is this.

The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

Therefore, this law was in force only for a very short period of time. During the

time that the law was valid, only 4 people were euthanized.

However, in 2019, the situation changed. Euthanasia be legal in the state of Victoria. There, euthanasia was admitted so long as the following rules were strictly followed.

- The person must be aged 18 years or more
  - The person must be an Australian citizen or permanent resident; and ordinarily resident in Victoria
  - The person must have decision-making capacity in relation to voluntary assisted dying
  - The person must be diagnosed with a disease, illness or medical condition that is incurable, is advanced, progressive and will cause death
  - The person's illness is expected to cause death within weeks or months, not exceeding 6 months. In the case of a neuro-degenerative disease (for instance, Motor Neuron Disease), the time frame for eligibility is extended to 12 months.
  - The person's illness is causing suffering to the person that cannot be relieved in a manner that the person considers tolerable.
  - A person is not eligible for access to voluntary assisted dying only because the person is diagnosed with a mental illness or a disability.
  - Requirements for assessing Health Practitioner
- Minimum requirements for co-ordinating medical practitioners and consulting medical practitioners:
- Each co-ordinating medical practitioner and consulting medical practitioner must hold a fellowship with a specialist medical college; or be a vocationally registered general practitioner.
  - Either the co-ordinating medical practitioner or each consulting medical practitioner must have practised as a registered medical practitioner for at least 5 years after completing a fellowship with a specialist medical college or vocational registration (as the case requires).
  - Either the co-ordinating medical practitioner or each consulting medical practitioner must have relevant expertise and experience in the disease, illness or medical condition expected to cause the death of the person being assessed.<sup>3)</sup>

In addition, patients must obey the process for euthanasia, which are the following

A person may make first request to registered medical practitioner. The practitioner must advise patient of all treatment options and their likely outcomes, including Palliative Care.

Registered medical practitioner must accept or refuse first request. Refusal must be clearly explained to the patient. Request must be accepted or refused within 7 days.

The person applies for a registered medical practitioner. Patient must notify all treatments and their likely outcomes, including Palliative Care.

The registered Medical Practitioner must accept or deny the request and the decision must be made within seven days. In case, the registered medical practitioner rebuffs those determination, they must insist their opinion undoubtedly.

The 2nd request must be a written request and be signed by the person making the declaration in the presence of 2 witnesses and the co-ordinating medical practitioner.

The witnesses must be:

- (a) aged 18 years or more; and
- (b) not an ineligible witness.

A person is an ineligible witness for the purposes of a written declaration if the person—

- (i) is a beneficiary under a will of the person making the declaration; or
- (ii) may otherwise benefit financially or in any other material way from the death of the person making the declaration; or
- (b) is an owner of, or is responsible for the day-to-day operation of, any health facility at which the person making the declaration is being treated; or the person making the declaration resides; or is directly involved in providing health services or professional care services to the person making the declaration.<sup>4)</sup>

The written insistence must clearly indicate that the person request by their own wish and is not forced and assimilate the traits and effect of the document that the patient is making.

The last offer is made to the co-ordinating medical practitioner. The patient must appoint a person whose age is more than 18 years old. Then, all the procedure needs to be followed up by the co-ordinating medical practitioner, before it will be certified that the request prerequisite has been fit for the requirements and that the prerequisite or decision-making capacity have been maintained. And the most important point is that patients can interrupt the operation whenever there is a change of mind. needless to say, there is no obligation to continue at any time and the patients can stop it whenever they want.

Although the process is long and arduous and hence it is not open to every patient, at least patients in some situations will be able to opt for euthanasia. This is a considerable change since patients without will to live can be released from their painful and miserable lives.

However, there are some contrary indication that say the legalization might expand in the future, in short, euthanasia can be of wide application. As I mentioned earlier, euthanasia may relate to some other issues, thereby making ambiguous the line between justified case and non-justified case. Moreover, legalization could impair the eagerness of both doctor and society to explore better ways of confronting with patients. What is more, they insist that we need not to rely on euthanasia, we should choose other ways as the reasons of deserving euthanasia often comes from not physically pain, but fears about future when they may be burden for their families.

### III Method of survey

I have conducted a survey to find out how Australians and Japanese feel about euthanasia. The survey was conducted between Mid-December 2018 and the first week of January, 2019. The numbers of respondents were 59 in Australia and 61 in Japan.

The percentage of men in Australia was 50.8%, and women 47.5%. The



remaining 1.7% did not specify their sex. In Japan, figures were 50.8% male, 49.2% female.

I did not distinguish between permanent residents Australian nationals.  
The questionnaire is as follows:

The text of survey in English

Are you an Australian or Australian permanent resident?

Australian

Permanent resident

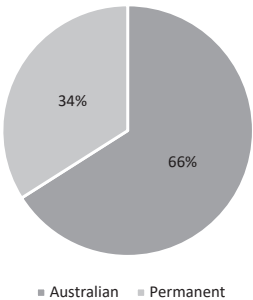


figure 1 ratio of Australian or permanent resident

Choose your age

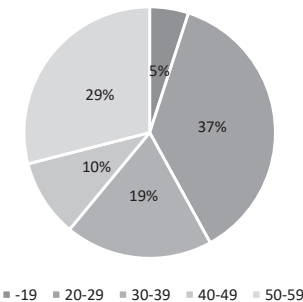


figure 2 ratio of age

Choose your sex

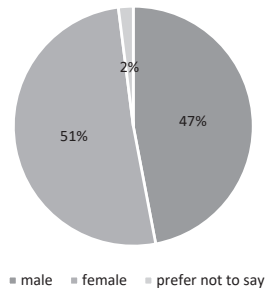


figure 3 ratio of sex

What is your political preference (if you choose other, please specify)

- Conservative
- Moderate
- Liberal
- Other

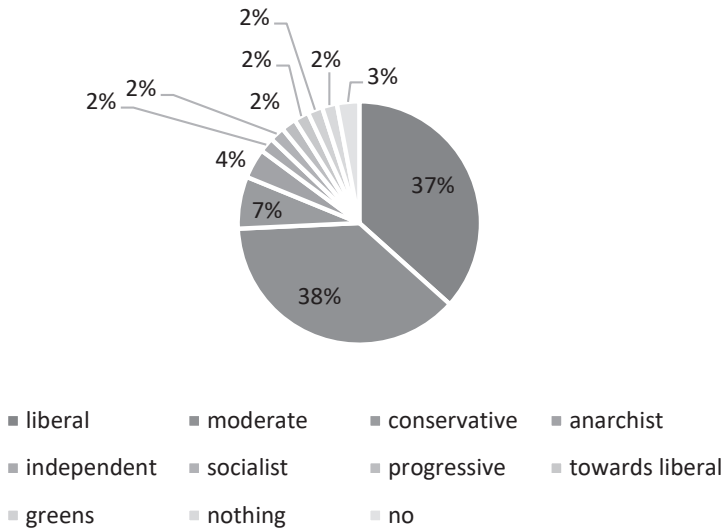


figure 4 ratio of political preference

Educational  
Junior high school  
High school  
University  
Technical/vocational  
Post-graduate

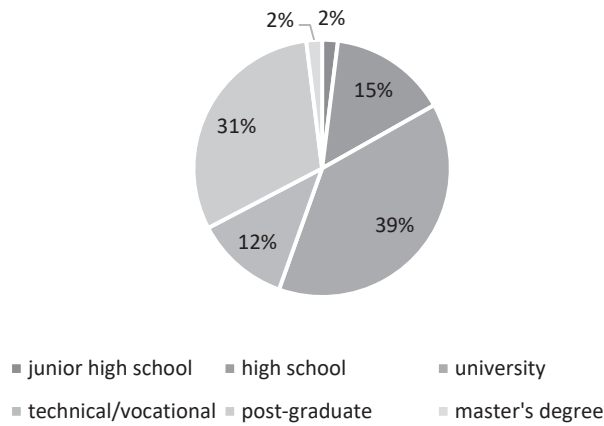


figure 5 ratio of educational

Interest on the topic of euthanasia  
1 not at all  
2 very little  
3 neither  
4 a little  
5 very

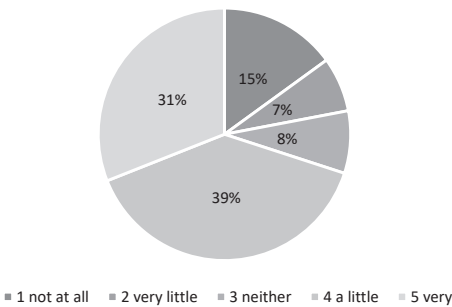


figure 6 ratio of interest in euthanasia

Do you agree or disagree in legalizing euthanasia

Agree

Disagree

Unsure

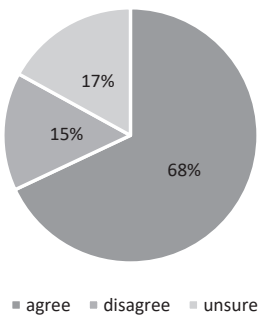


Figure7 the ratio of pro and cons of legalizing euthanasia

If you choose unsure, please specify the reason

- complicated ethics and such a case by case issue!
- Haven't experienced this situation before
- Thin end of the wedge, requires tight regulation
- Not really know about euthanasia
- Concerned about safeguards

- Not aware of topic
- Not had a reason to think about it
- Don't know well
- Sometimes agree and sometimes disagree

If you disagree, which criterion is it based on:(if you choose other, please specify)

Religious

Humane

Other

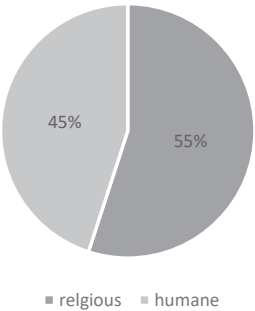


figure 8 ratio of reason for disagreement for legalizing euthanasia

If you choose humane, choose which factor is your choice based on:(if you choose other, please specify)

Doctors kill patients

Patients kill themselves

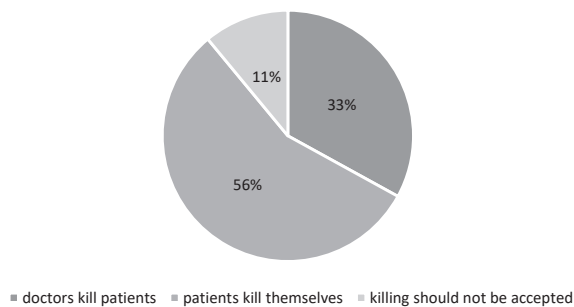


figure 9 ratio of the reason for disagreement in humane reasons

If you disagree based on your religion: what is your religious belief

Christianity (Catholic, Protestant, others)

Buddhism

Hinduism

Islam

Judaism

Atheist

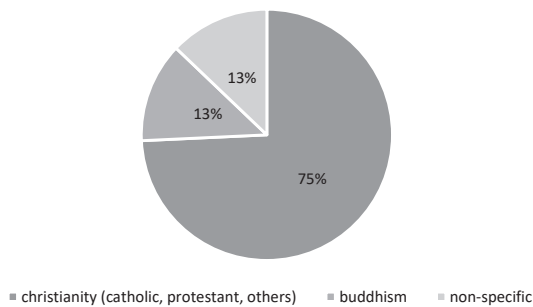


figure 10 ratio of religion

The text of survey in Japanese

あなたの年齢を教えてください

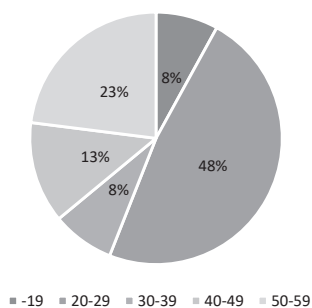


figure 11 ratio of age

あなたの性別について教えてください

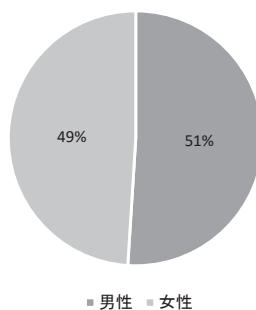


figure 12 ratio of sex

あなたの最終学歴についてお教えてください。

中学校

高校

四年制大学

専門・短大

博士、修士

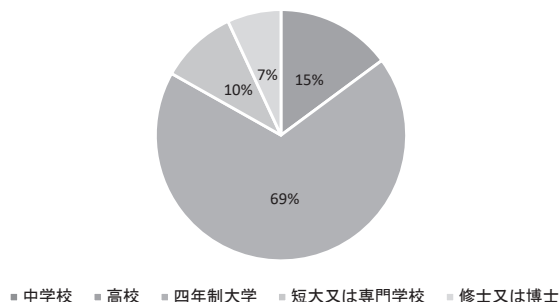


figure 13 ratio of educational

政治的立ち位置について、お尋ねします。主観で構わないので、御自身の政治的立ち位置をお教えてください。

革新

中間

保守

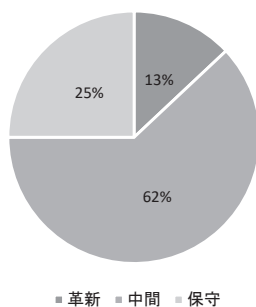


figure 14 ratio of political preference

以下では、安楽死に対するあなたの考え方についてお尋ねします。あなたは安楽死全般に対して、どの程度関心を持っていますか。

- 1 全く関心がない
- 2 ほとんど関心がない
- 3 どちらでもない



- 4 少し関心がある
- 5 非常に興味がある

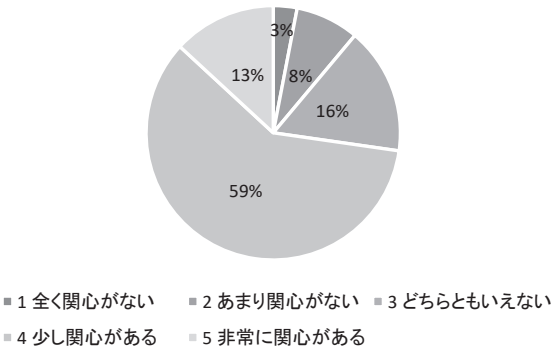


figure 15 ratio of interest in euthanasia

以下では、日本での安楽死についてお尋ねします。日本で、安楽死を制度化すべきだと思いますか。

制度化すべき

制度化すべきではない

その他

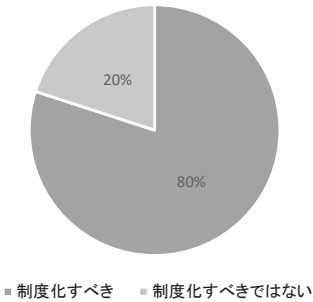


figure 16 ratio of opinion for legalizing euthanasia

制度化すべきではないとお答えした方にお尋ねします。その反対の理由は、宗教的観点、人道的観点、又はその他の理由のいずれでしょうか。その他の場合は、その理由もお答えください。

宗教的観点

人道的観点

その他

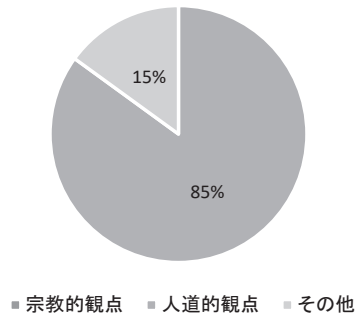


figure 17 ratio of the reason of disagreement for legalizing euthanasia

The reason for others (その他)

- 命の炎が消えるまで抗うべき (We should live until the life ends)
- 必要性を感じない (I do not think it is necessity)

人道的な観点であると回答した方にお尋ねします。人道的に問題であるのは、医師が殺人を犯すことですか、それとも患者が死を選ぶこと、またはその他の理由でしょうか。その他の場合は、記入していただきたいです。

医師が殺人を犯すこと

患者が死を選ぶこと

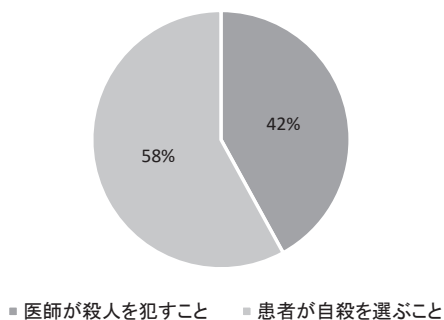


figure 18 ratio of reason for disagreement for legalizing euthanasia in humane reason

宗教的観点とお答えした方に、お尋ねします。何を信仰なされていますか。その宗教についてご記入ください。

キリスト教（カトリック、プロテスタント、その他）

仏教

ヒンドゥー教

イスラム教

ユダヤ教

無神論者

その他

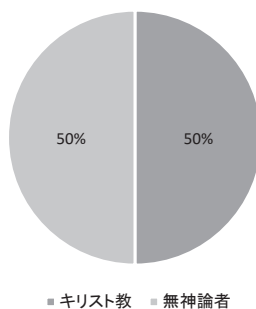


figure 19 ratio of religion

IV Result of survey

The survey result shows that 80.3% of the Japanese respondents are favorable to the legalization of euthanasia. This is higher than the figure for Australian respondents, which is 67.8%. This survey thus shows that more people in Japan are favorably disposed to euthanasia.

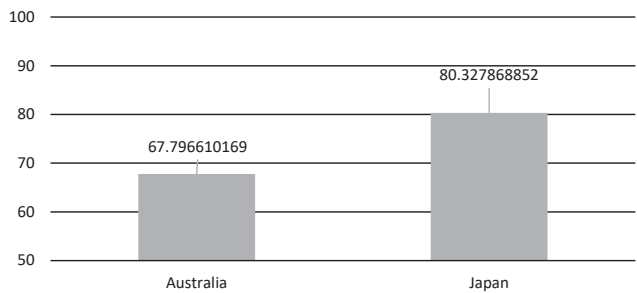


figure 20 the number of agreement for legalizing euthanasia

What is also noteworthy is that, according to the survey, both in Japan and Australia, most dissenting opinion is based on the humane reason. However, there is a stark contrast between the two countries on the following point: while no objection was based on religious reason in Japan, 45.5% of Australian respondents mentioned this reason.

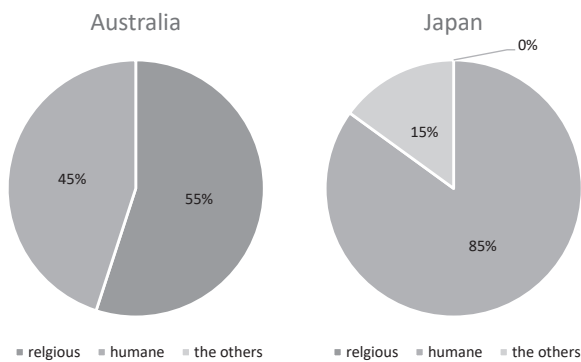


figure 21 the reasons of dissenting opinions towards legalizing euthanasia

I shall list below, some of the other interesting findings

Approximately 60% of the people who disagreed out of concern for humane treatment did not think that patients be allowed to kill themselves, and around 40% of people's disagreement is based on the reason that the doctors should not kill their patients in both countries.

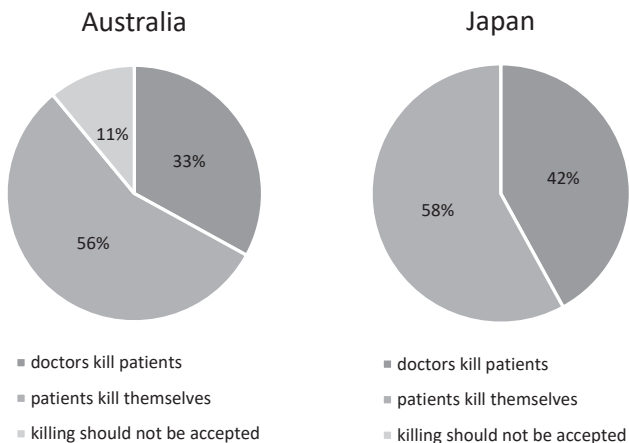


figure 22 the reasons for disagreement for legalizing euthanasia in humane reason

As for the interests in euthanasia, approximately 70% of the respondents chose 4 (the interest in euthanasia is a little) or 5 (the interest in euthanasia is very) in both countries, yet there are differences in the number of people who chose 5. That number in Australia is approximately 30%, while in Japan it is less than 15%. Though the number of people who chose 5 in Japan is less than half of that of Australia, at least, large numbers of people in Japan are interested in euthanasia and the majority of people are also in favor of euthanasia.

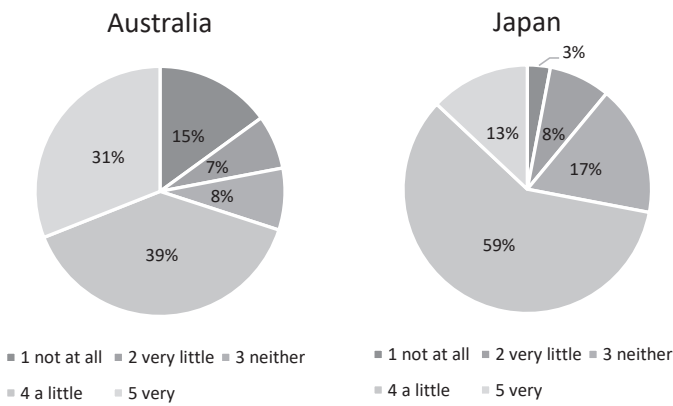


figure 23 interest in euthanasia

Drawing on these findings, although there is long way to go in comparison with Australia, I strongly believe that Japan should consider legalizing euthanasia. Japan is an increasingly aging society, where more and more people suffer from deteriorating health and its consequences. Furthermore, Japan is renowned for its high average life expectancy; but this longevity does not necessarily correspond with healthy and pain-free lifestyle. There are quite a few numbers of patients who are bedridden and suffering extreme pain.

According to the Japanese governmental survey conducted in 1999, there are 1243000 of people who are bedridden and what is worse, according to the Japanese Ministry of Health survey: the average life span comes from kouseiroudousyo “heisei22nenkanzenseimeihyo” and the health expectancy are from *kenokujumyonio kersuyouraiyosokutoseikatusyukannbyotaisakunohiyounikansurukenkyu*the, the number seems to be increasing, with the gap between average length of life and healthy life years widening every year. It may also be the case that the number of patients who are forced to alive against their will is on the increase.

In Australia, as mentioned above, doctors do not always have to take life-prolonging treatment when they do not recognize it is the best way. Yet doctors in Japan must always choose life-prolonging treatment: it is considered the doctor’s mission to make patients alive as long as possible.

I believe it is worth considering the possibility of legalizing euthanasia is there are increasing number of patients who is suffering extreme pain and is made to live against their will. Japan should introduce euthanasia to the doctors whose mission is to extent patient's life as possible as they can, yet this is duty and even if they are conscious that this treatment is not seemed to be the best treatment, they must do. It is time to reconsider what Japanese medical situation faces now and change our mind toward medical treatment. It cannot be the best to live as long as patients can when they do not want to live, it can be the best to die in proper timing by euthanasia.

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