

Contemporary Comments

Changing Attitudes to the Death Penalty: An Australian Perspective

At 6 AM on December 2nd 2005 the Australian Nguyen Tuong Van was hanged in Singapore. Five days later his funeral at St Patrick's cathedral in East Melbourne exceeded many state funerals in Australia both in terms of its size and displays of grief.

Nguyen Tuong Van had been intercepted at Changai international airport carrying 396 grams of heroin en route to Australia. His execution brought forth unprecedented media focus, public discussions and political lobbying and, if nothing else, represents a significant point in the history of Australia's attitude to the death penalty. It is just possible that it may stimulate a renewed willingness for Australia to assume a greater role in global efforts to abolish capital punishment. At the very least the debate (some might say debacle) has sensitised the Australian community once again to the moral and practical issues associated with the death penalty.

It has been almost 40 years since the last execution in Australia. The recent debate over the Nguyen Tuong Van case brought to the surface some of the important questions about the use of capital punishment. While fundamental questions about deterrent effects have largely been settled, the harder questions about the morality of the death penalty remain. However, even here the ground has shifted and the pro-death position is now rarely embraced by responsible civic leaders. Perhaps the most relevant questions for those wanting to contribute to the global abolition of the death penalty concern how to accelerate the positive change in attitude. What can we do to foster disdain, doubt or simply disapproval of the death penalty? How can we stimulate or support changes of attitude at both a national and global level? What is the most effective way to raise the consciousness of the media and public in regard to the death penalty, particularly in those countries where it is still practiced? In this brief commentary I will focus on changing attitudes to the death penalty, both the changes that are naturally occurring and also some ways these changes may be supported within the context of current events.

The long decline in support for the death penalty

Attitudes toward the death penalty have been moderating across most of the Western World for centuries. The Nguyen Tuong Van case sparked a new urgency to the debate about the morality of the death penalty. The case presented to Australians unsettling images of an Australian facing an archaic punishment at the hands of a neighboring Commonwealth nation. Not only is Singapore a nation with which we have a shared history, it is one with which we have intensive educational, personal and economic links and is usually seen as a something of a modern success story. The frequent use of adjectives like 'barbaric', 'obscene' and 'abhorrent' signal the willingness of Australian political leaders to speak out on a matter where, they believe, the immorality is plain. These descriptors also resonate with the view that civilisation can be measured by its distance from the use of physical punishments. A similar language punctuated the debates of 30 to 40 years ago which saw

the abolition of the death penalty in Australia. But how did we arrive at this position? If we want to contribute to a reduction in the use of the death penalty in other parts of the world we perhaps need to take a closer look at how a moral repugnance to the use of the death penalty develops.

Over the last two centuries, capital punishment has gradually been abandoned in most parts of the world. Beginning with a reduction in the use of cruel and tortuous executions, through the curtailment of a range of corporal punishments, eventually to the cessation of public executions and finally to the abolition of the death penalty itself. The death penalty is now commonly viewed in many countries as being both repugnant and cruel. The change in public mood that accompanied the decline in physical punishments is often understood to be a product of shifts in key social sensitivities and values. The change, it is argued, usually begins amongst educated liberal elites. It is important to recognise the role of opinion leaders, especially social reformers. However, the change in values is generally seen as part of a wider sensitisation to violence which develops as part of what Norbet Elias called 'the civilising process'.¹

Of course the march forward toward a more sensitive future is not even and there remain many 'de-civilising' forces and opportunities.² Elias also argued that the growing sensitisation to violence may have occurred through a process of social imitation in much the same way as the development of table manners developed in the courtly classes and were gradually adopted by all sectors of society as the norm. What does seem to be important in the sensitisation to violence process is fostering both a capacity to imagine the suffering of others and subsequently to care about it. Both these capacities seem to be engendered and supported in environments marked by a distinct interest in the value of the individual.

Perhaps because empathy is more likely when social distance is reduced³ sensitisation to physical punishments is more likely in cases where the punishment is inflicted on someone we can identify with and who is seen as undeserving of such treatment. The case of Nguyen Tuong Van provided key elements of an attractive and undeserving victim and thus provided a crucial opportunity for a media focus to illustrate the inhumanity of the death penalty. It is thus useful to touch on some of the critical aspects of the case and the reaction of Australian politicians.

Nguyen Tuong Van's execution and the debate in Australia

The cruelty of the death penalty was made easier to illustrate because of three characteristics of the Nguyen Tuong Van case. Firstly, the crime did not involve murder, or even what many would consider a violent crime, but drug smuggling. Second, the individual involved was young, contrite and with no criminal record. Third, the offender was the son of a refugee who struggled in difficult circumstances and apparently motivated in his crime to look after his brother. In short Nguyen Tuong Van did not fit the preferred

1 For a recent account of Elias' civilising process and its application to an understanding of the evolution of punishment practices in Australia see Pratt (2002). Norbet Elias' view of the civilising process has been enormously influential in understanding the history and the sociology of punishment. See Eisner (2003) for a longer term view of the trends in violent crime and the role of the civilising process or Fletcher (1997) for an excellent exposition of the relationship between civilisation and violence more generally.

2 Most notably in Western Europe during the Nazi reign of terror, but generally at times of natural disasters, warfare and (notably) under the rule of authoritarian regimes.

3 See Preston and DeWaal (2002) for a comprehensive review and theory of empathy including the role of familiarity, identification and role taking.

profile of the selfish drug runner that mandatory death penalties are designed for, nor the cold calculating killer that many death penalty supporters see as justifying capital punishment. Add to this that Nguyen Tuong Van was only transiting through Singapore International Airport from Cambodia to Australia. The bizarre twist to this story that has received little attention was that the Singaporean government ostensibly executed Nguyen Tuong Van on our behalf as the drugs were not bought in Singapore and not destined for Singapore but Australia.

In Australia political lobbying for Nguyen Tuong Van was seen by many to be 'too little, too late'. The decision at the last minute not to take the case to the International Court of Justice was seen to be not only defeatist but also to signal a reluctance on the part of the government to embarrass Singapore or embarrass itself. Concerns with language and wording of an objection of a Senate motion led to a vigorous outpouring of emotion in federal parliament.⁴ Howard's approach on the matter, in keeping with his approach on other unpalatable human rights issues, appears to have been to attempt to carefully maintain a 'Chinese wall' between economic relations and human rights abuses. The Democrats along with the Greens have questioned this stance as have a number of other media and political elites. Senator Natasha Stott Despoja, proclaimed in her column published in the Adelaide Advertiser (21/11/05):

I am sick of being told that human rights and trade talks are necessarily separate ... In this five-minutes-to-midnight period, our Government must yell more loudly ... we should be strong in our principles as a signatory to the Second Optional Protocol ... This is an opportunity for Australia to use its position as a leading nation in the region to promote universal abolition of the death penalty.

Labor's Foreign Affairs spokesman Kevin Rudd also pointed to the need for Australia to fulfil its obligations under the Second Optional Protocol and become more active in lobbying for the reduction in the use of the death penalty.⁵ This may be especially relevant given our deepening relationship in the East Asia region. This is an area which contains not only two of the leading execution states (China and Singapore) but has failed (for example through ASEAN) to take states like Burma with its appalling human rights record to task.

If Australia was to contribute to the global abolition of the death penalty it clearly is handicapped by the perception, common in the region, that it is an extension of American foreign policy and it has a separate cultural history. However Australia may have a role in ensuring critical debate on the death penalty is maintained. What we know of how public attitudes change should give heart to the abolitionists and point to the vital role of the media in stimulating public and political discussions.

Contributing to a change in public attitude on the death penalty

Public attitude is nowhere more important than in the US where it is critical to a key point in the constitutionality of the death penalty. This is the provision under the Eighth Amendment that no citizen should be subject to cruel and unusual punishment. Studies of public opinion are continually picked over by the Supreme Court and judicial scholars in

4 See Senate discussion on Tuesday 6th December by Greens Senator Bob Brown on moving for a suspension of standing orders to question the governments lacklustre criticism of the death penalty.

5 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. Adopted and proclaimed by UN General Assembly resolution 44/128 of 15 December 1989. This protocol proclaims an international commitment to abolish the death penalty. Rudd argued that Australia should team up with the European Council to get more countries in the region to sign the Protocol.

the US for signs that the practice of capital punishment might indeed be out of step with public sentiment and thus constitute something that could be thought of as 'unusual'. Cruelty, it seems, is much harder to define.

In passing its judgment last year (2005) that the execution of juveniles did offend the provisions of the Eighth Amendment the US Supreme Court⁶ drew on the fact that the US position on capital punishment was increasingly out of step with global practice and opinion and thus could be considered 'unusual'. Public opinion thus *does* matter but this leads on to debates about what is taken as a sufficient and accurate measure of public opinion. This is a matter of contention, with some arguing that public opinion is little more than 'published opinion'.⁷ There is a better understanding now that the way public attitudes are depicted in one-line polls sponsored by news organisations are likely to seriously distort and misrepresent the truth in regard to public sensitivities on the use of the death penalty.

In the recent public debate in Australia the figures being cited in relation to public support used the standard 'death penalty question' which asks 'would you be in favour of capital punishment for cases of murder?'. When measured by this question, support in Australia for the death penalty over the last 20 years peaked in 1993 and since that time (and in line with most other English speaking countries) has been on the decline falling below 50% for the first time in 2003 (Indermaur & Roberts 2005). This trend mirrors that in the US, albeit the level of support in that country sits at a higher level. In October 2003 US support for the death penalty dropped below the two thirds mark for the first time since 1981 (Roberts 2005).

Although the results cited above are somewhat useful for tracking changes to sensitivity on the use of the penalty they should not be interpreted literally. An important insight into death penalty attitudes emerged from research in the US in the 1990s (e.g. Bowers, Vandiver & Dugan 1994). This research demonstrated the malleability of support for the death penalty. The level of support was found to be dependant on the precise question posed and the options given to respondents. Up to half of the support for the death penalty was found to fall away if an alternative sentence of life in prison without parole was presented. It is also well known that support drops if the question is not posed in terms of an abstract opinion but a decision for which some responsibility must be taken (Williams, Longmire & Gulick 1988)⁸. Unsurprisingly, support can also be diminished if respondents are exposed to videos of executions (Howells, Flagan & Hagan 1995).⁹

Another relevant point in understanding public attitudes concerns the role of the purported deterrent effects of the death penalty. Many respondents may believe the death penalty is necessary to prevent crime by deterring potential offenders. However the evidence now amassed has not found sufficient support for this belief. Finally, the strong levels of support for the death penalty in the US have moderated as knowledge grows about

6 *Roper v Simmons* US 03-633, March 1 2005.

7 A long line of scholarship has pointed out how public opinion is to a large extent led and framed by elite opinion, especially as it is depicted on the news media (McCoombs & Shaw 1972, Hermann & Chomsky 1988, Herbst 1998, Lewis 2002). This phenomenon is particularly relevant to social, political and moral debates where the issues being 'nominated' for consideration and debate largely depend on the media.

8 Much reported public opinion simply reflects 'top of the head' views which are in many ways 'expressive' rather than considered judgements. Thus it is important to engender a sense of responsibility on the part of the respondent expressing a view on the death penalty. Osofsky, Bandura and Zimbardo (2005) recently examined the process of moral disengagement and the death penalty and found various levels of moral, social, and economic justifications, disavowal of personal responsibility, and dehumanization.

9 The implication here is that executions are more likely to be continued if they are kept hidden from view, under secret conditions with minimum publicity or discussion.

flaws in the judicial process leading up to the sentence of death. Given the large number of death row prisoners who have now been exonerated,¹⁰ legislators and the public alike are clearly becoming more tentative about the use of capital punishment.

Putting these various pieces of research on the malleability of public opinion together, a good test of public support for the death penalty would not come from blandly presenting a question like 'are you in favour of the death penalty in the case of murder?' but rather something more like: 'Consider yourself to be a judge in a case involving murder. You must decide whether the death penalty should be applied to the accused knowing that it is not necessary to achieve any deterrent effect, and that the alternative sentence of life in prison without parole is available, what is your decision?'. The respondent could also be apprised of information concerning the level of informed public support, maybe witness a few executions and study how in some cases innocent people have been executed. The results of such a study may then approximate something which we may wish to label 'the views of an informed public in relation to employing the death penalty'.

There is one more important point to raise in relation to the death penalty and public attitude. The basis of much public opinion is thought to derive from elite opinion and also the political flavour of certain positions. Many will be prepared to look to church leaders for the position to take on social issues. But there is an even more significant psychological process at work that will determine the position on a social issue adopted by an individual. This concerns our desire to be part of the mainstream. Studies of public attitude consistently point to the way decisions on which opinion to embrace are shaped by what respondents believe is a 'socially desirable' view.¹¹ Most people, it seems, want to have an opinion that is in keeping with the majority, particularly in relation to subjects where there is a risk of social isolation from proclaiming an unfashionable or unpalatable view. It follows that, as support for the death penalty wanes, there will come a point when the majority will express disapproval of the death penalty even in 'top of the head' surveys. The Australian survey results cited above suggest that point is fast approaching or has already arrived. Once it becomes known that supporting the death penalty is a minority position support for the penalty should recede ever more quickly.

It should also be noted here that while public opinion can provide for the legitimacy of a law, the law can also provide for the legitimacy of an attitude. The official position adopted by a country and its leaders is significant in influencing attitudes. Official signals of approval or disapproval of the death penalty through law, international treaty or official pronouncement translates to a certain degree to the level of support for the penalty.

National abolitions of the death penalty ultimately occur through the two modes which go hand in hand. On the one hand there is a change in public attitude. On the other through actions of judges, politicians and other key elites the penalty is actually used less and less. The final step in the process is the formal abolition which then reinforces public opinion against the death penalty. The reduction in the use of the death penalty and its eventual abolition themselves lead to a further changes in opinion at the global level as the practice becomes relegated to history and is associated with bizarre and unfashionable corners of the globe such as North Korea and Iran.¹²

10 In the 25 years from 1973 to 1998, there were an average of 2.96 exonerations per year. In the five years since 1998, through 2003, that average has risen to 7.60 exonerations (Death Penalty Information Centre <www.deathpenaltyinfo.org/>).

11 Research on the theory of planned behaviour (Ajzen 1991) or the spiral of silence originally proffered by Noelle Newman in 1973 (see Glynn, Hayes & Shanahan 1997 for a recent review). See Neuwirth and Frederick (2004) for an overview of the research on social influences on the expression of opinions.

Conclusion

The Nguyen Tuong Van case raised a raft of issues for Australia on moral, political and legal levels. This brief commentary only touches on one aspect of one of those issues. The case is important to the issue of changing public attitudes primarily because it allowed a revivification of public disavowal of the death penalty and highlighted the cruelty and arbitrariness of the death penalty as practiced by a close neighbour. The momentum generated by this case in public sentiments may also provide support for the political changes that are necessary to agitate for reductions in the use of the death penalty. Australia's capacity to make a difference here would be greatly enhanced through the establishment of a framework within which the protection of human rights could figure in our foreign policy.¹³

As the level of global interconnections increases and national boundaries become ever more blurred the relationship between morality politics and foreign policy will come under increasing scrutiny. The execution in Singapore represented a sobering experience for many Australians and has ultimately raised the question of how far we should go in sacrificing moral principles at the alter of diplomatic sensitivities and economic self interest.

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12 See <www.amnesty.org> for the latest tally of countries that have abolished the death penalty. Although calls for the re-introduction of the death penalty will surface from time to time in letters to the newspapers and through talk back radio, the legitimacy of the death penalty after years of abolition will be seriously questioned, particularly when its abandonment by leading first world nations is taken into account.

13 Such a task would naturally benefit greatly if we were able to point to our own 'Bill of Rights'.

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