

# Inconsistent on the Death Penalty: Australia, Indonesia and the Rule of Law

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*“Our attitude towards capital punishment seems to mirror our attitude towards torture – that it’s ok so long as one class of murder suspects, known as ‘terrorists’, are involved.” – Irfan Yusuf, “Death Penalty Hypocrisy,” The Drum, Sep 29, 2010.*

The death penalty may be a monstrous use of a state’s power against the human subject, but the campaign against its use by states who have abolished it can prove inconsistent. While Australia sermonises against the evils of putting a person to death, it stalls on the broader issue of how best to approach a state, like, for instance, Indonesia, which uses capital punishment against drug traffickers in the name of upholding the law.

Much of this has spiked with the vain efforts to secure clemency for Australian citizens Andrew Chan and Myuran Sukumaran, both of whom are destined for the firing squad for their role in organising the drug trafficking outfit that came to be known as the Bali Nine. The narratives on the so-called Bali Nine avoid with a good deal of blindness Indonesian accounts on the drug trade – that it, too, results in generous number of corpses. Australian MPs have deflected the issue, insisting that, “Their crime, serious as it was, was intended to impact on Australians in Australia, not Indonesia.”

Indonesia’s Attorney-General, H.M. Prasetyo, saw no distinction. “[The executions] will send a message to members of drug syndicates – there is no mercy for drug dealers and traffickers.” To those who disagreed with the death penalty, Prasetyo insisted they consider “that what we are doing is simply to save our nation from the threat of narcotics” (*Business Insider Australia*, Feb 12).

The focus is, rather, on the cruelties that will be visited upon the two men. “The idea that the government would,” reflected Justice Lex Lasry, “take individuals into the bush and shoot them is something I can never live with, can never understand.”<sup>[1]</sup> Pleas for clemency have been made by Prime Minister Tony Abbott and Australia’s minister for foreign affairs, Julie Bishop.

The President of Indonesia, the still freshly elected Joko Widodo, was in no mood to accede to the requests. As part of his fresh approach to the issue of combating the drugs trade, he has decided to bracket all and sundry. This is domestically problematic, suggesting that Widodo might be overstepping the mark. According to Ponti Azani, who represents both Chan and Sukumaran, Indonesian law requires a consideration of each individual case.

What such responses suggest is that a good deal of exceptionalism is at play, one that actually takes the battering ram to the very rule of law that is deemed sacred in the

Anglophone sphere. (It should be added that all states, even those with the death penalty, play it, including Indonesia, in making efforts to save their own citizens from the executioner in other countries.)

Australian citizens are deemed to be of a better mineral than locals, over men and women whose passports should grant them a more compassionate hearing and fate. Tim Mayfield, writing in *The Drum* (Jan 23), noted the response of Brazil and the Netherlands in recalling their ambassadors to Indonesia as a protest against the use of the death penalty against its citizens. Would Australia be “willing to take the same stand”?

*The Australian*, a paper not exactly bound to the human rights canon, put forth its own variant of the rule of law. “This newspaper’s objection to the death penalty is not targeted at Indonesia; it arises from the principle that the protection of life, including from the power of the state, is the moral bedrock of any worthy system of law” (Feb 12). That the paper objects to the power of the state in that manner is a curious thing indeed, when one considers the paper’s endorsement of Australia’s own variant of the gulag archipelago in processing asylum seekers, some who remain in indefinite detention. How attitudes to cruelty vary.

The other form of exceptionalism plays out in attacking Australia’s own authorities for alerting the Indonesian police about the activities of the Bali Nine. Big time populist and radio shock jock, Alan Jones, after terming the death penalty “barbaric” on the ABC’s *Q & A* program, weighed into the role played by the Australian Federal Police for their collaborative approach in this regard. Had they made their own arrests and essentially been non-cooperative with their Indonesian counterparts, the drug traffickers would have been spared the agony.

The Jones recipe in this regard is significant. Not only did he fume against the Australian police, he felt that Canberra should have a greater, bossing clout when it came to Jakarta. The white man’s burden, tinged with charitable reminder, reared the most ugly of heads. “Someone has to get on the phone to this bloke, [Widodo] and simply say, ‘Well, you do what you like, but we gave you a billion dollars [in disaster relief aid] when you were hit by the [2004 Boxing Day] tsunami.’”[2]

There is nothing to be said for the use of the death penalty, a cruel, mechanical application that finalises the irreversible. It is cruel, and it sanctions murder. But if the rule of law and the sovereignty of a legal system are matters to respect, then it can’t be thrown out because the citizenship of one country is deemed more exceptional than another.

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## Notes

[1] <http://www.abc.net.au/news/2015-02-11/lex-lasry-calls-for-clemency-for-bali-nine-duo/6086674>

[2] <http://www.smh.com.au/entertainment/tv-and-radio/alan-jones-slams-bali-nine--death-sentence-as-barbaric-on-ga-20150210-13a6we.html>

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