

## RONALD RYAN

### Supreme Court of Victoria Library

Friday, 3 February 2017

The Hon. Dr Barry Jones AC

While the Aborigines imposed the sanctions of sorcery and expulsion from the tribe which would have resulted in death, execution as a ritual begins in Australia with European intervention, when seven Dutch mutineers (and murderers), survivors of the sinking of *The Batavia*, were hanged by the Dutch East India Company (VOC) on Seal Island, on the Houtman Abrolhos Islands, off the coast of Western Australia in October 1629.

The First Fleet began the occupation/ settlement of Australia in January 1788.

The first execution took place in Sydney just one month later, when Thomas Barrett, aged 17, was hanged for theft. The first twenty four executions in New South Wales were for stealing or burglary.

There were 1630 Australian judicial hangings in the 19<sup>th</sup> Century, 150 in the 20<sup>th</sup>, none in the 21<sup>st</sup>.

Not all executions took place in Australian prisons. There were extra-judicial lynchings of Aborigines: some hundreds, possibly more.

In Papua New Guinea in 1943 and 1944, the Australian Army tried, convicted and hanged more than 100 indigenes in remote areas, sometimes for murder or rape, but often for collaboration with Japanese forces. These punishments, carried out in public, but not reported to the Australian Government, now seem inexplicable.

Between 1945 and 1947 there were 148 executions of Japanese war criminals sentenced by Australian tribunals.

The numbers of executions in PNG under colonial rule are elusive, but there may have been almost sixty until hangings ceased in 1954. (The death penalty was restored in PNG in 1991 but has never been applied.)

Queensland had its last execution in 1913, New South Wales in 1939, Tasmania in 1946, the Northern Territory (under Commonwealth law) in 1952, both South Australia and Western Australia in 1964. Between 1901 and 1964 Western

Australia executed more than any other Australian state, and was the last to abolish the death penalty (not until 1984.)

Ronald Joseph Ryan, convicted of murder, hanged at Pentridge, on 3 February 1967, fifty years ago today, was the last of about 2140 men, women and children to be executed in Australia and/or its territories, over a span of 338 years, leaving aside possible lynchings.

Ryan was the 186<sup>th</sup> person to be executed in Victoria.

Victoria abolished the death penalty in 1975.

In the 16th Century, Michel de Montaigne, the great French essayist, philosopher and part-time judge, concisely set out his reasons for opposing the death penalty:

Judgments normally inflame themselves towards revenge out of horror for the crime. That is precisely what tempers mine: my horror for the first murder makes me frightened of committing a second, and my loathing for the original act of cruelty makes me loath to imitate it. [‘On physiognomy’]

The Milanese economist Cesare Beccaria in *On Crimes and Punishments (Dei delitti e delle pene)*, published in 1764, argued for the abolition of the death penalty with a classic simplicity – that there is no demonstrable correlation between the severity of punishment and the crime rate: all punishment deters but there is no statistical evidence that execution, or torture, deters uniquely. He insisted, ‘If I can prove that the death penalty is neither necessary nor useful, I shall have achieved the triumph of mankind.’

Essentially, there have been no new arguments for abolition since Beccaria.

The death penalty was abolished in Tuscany as early as 1786 and in Austria by the Emperor Joseph II in 1787.

The great Russian novelist Leo Tolstoy saw a guillotining in Paris in 1857 and the image haunted him all his life:

I witnessed many atrocities in the war and in the Caucasus, but I should have been less sickened to see a man torn to pieces before my eyes than I was by this perfected, elegant machine by means of which a strong, clean, healthy man was killed in an instant. In the first case, there is no reasoning will, but a paroxysm of human passion; in the second, coolness to the point of refinement, homicide-with-comfort, nothing big.

When I saw the head part from the body and each of them fall separately into a box with a thud, I understood – not in my mind, but with my whole being – that no rational doctrine of progress could justify that act, and that if every man now living in the world and every man who had lived since the beginning of time were to maintain, in the name of some theory or other, that this execution was indispensable, I should still know that it was not indispensable, that it was wrong.

The last execution in Ireland was in 1954, New Zealand in 1957, Canada in 1962, Great Britain in 1964, Australia in 1967.

The death penalty has been abolished in every European state except Belarus, but including Russia, throughout South America, in fifteen African states.

Every English-speaking nation is abolitionist, except for ten Caribbean mini-states (but not applied for the last decade) and – most important – the United States. In the U.S. numbers of executions are falling and they are mostly confined to a few states in the Old Confederacy, and two border states.

The death penalty is applied in most of Asia, all the Middle East. Some countries, for example Indonesia, punish drug offences far more harshly than murder. Six Australians have been executed overseas, all for drug offences, since 1967.

In 1991 Australia ratified the Second Protocol of the International Convention on Civil and Political Rights (ICCPR) which binds nations to oppose the death penalty and has been adopted by the UN General Assembly.

103 countries have now abolished capital punishment. Another 54 states are abolitionist in practice, having had no executions for decades. Israel, for example, has had only one execution since the state's creation in 1948.

Ultimately, all executions are political.

Their exercise is arbitrary, often capricious, and irrevocable. It depends on geography too, as Blaise Pascal noted in his *Pensées*, 'Three degrees of latitude upset the whole of jurisprudence.'

The Canadian philosopher Ronald Wright argues: 'States arrogate to themselves the power of coercive violence: the right to crack the whip, execute prisoners, send young men to the battlefield. From this stems... [what] J. M. Coetzee has called "the black flower of civilization" – torture, wrongful imprisonment, violence for display – the forging of might into right'. States employ 'various styles of human sacrifice'... as forms of 'the ultimate political theatre'.

Amnesty International reported an upsurge in the number of reported executions throughout the world in 2015, the highest figure for 25 years: a total of 1634, most of them in three countries, Iran, Pakistan and Saudi Arabia. The total figure would be far higher because China keeps details of its executions, thought to be in the thousands, as a 'state secret.'

Seeking security is understandable. Reacting to fear is another.

But fear is a bad driver for public policy. We live in deeply troubling times. It is easy to understand why people in many countries are gripped by insecurity and the risk of attack, by internal or imported terrorism, in schools, churches, mosques, heritage sites, public transport, shopping malls, offices, of horrors seen every day on television and the web, and ready access to lethal weapons and mood changing drugs. As a defensive reaction, many citizens would like to see the return of retributive punishments. Desperation may push them to rely on subjective opinion rather than objective evidence.

The death penalty is a subject where the political and professional classes have been well ahead of popular opinion. In California, referenda to abolish the death penalty were defeated in 2012 and 2016, as part of the ballots when Barack Obama and Hillary Clinton won large majorities.

Campaigners for abolition have to be prepared to argue for the tough cases, repulsive as they are, including Adolf Eichmann, Saddam Hussein, Eric Cooke, Amrozi. The moral high ground does not allow campaigners to be selective.

We need to think deeply about what manner of men and women we are. In the final analysis, do we make judgments coolly and calmly on the basis of evidence which is capable of being weighed and objectively analysed? Or is it the case that, in dealing with human nature, objective analysis is useless and we are forced into *terra incognita* and must decide blindly, on the basis of instinct or gut reaction? We stand, I hope, against darkness, against obscurantism, against instinct, against pessimism about society and the capacity that individuals have for moral regeneration.

François, Cardinal Marty (1904-1994), Pope John XXIII's choice as Archbishop of Paris, wrote:

If a man does no longer act like a man, the community must refrain from following him. Each time a human being is treated as a non human being, then every human being is threatened. Any individual who commits an act of violence against another individual is degrading mankind. If we want to safeguard the concept of human beings now being threatened, we must resist the temptation of retributive anger.

Can man, that imperfect being, be expected to render perfect justice? In that respect, could capital punishment give a notion of perfection to the justice of human beings?