

SENTENCING SCHAPELLE

A DRUG-INDUCED DISCUSSION ON THE DIFFERENCES BETWEEN AUSTRALIA AND SOUTH-EAST ASIA

THE SPATE OF high-profile drug trafficking cases involving Australians provided an avenue of expression for the thinly veiled feelings of superiority of some Australian media commentators over our South-East Asian neighbours. The Australian public heard repeated expressions of outrage at the severity of the sentences and, particularly in the case of Shapelle Corby, comparisons to Abu Bakar Bashir's three-year jail term, which was then reduced to eighteen months, for immigration offences connected with the terrorist organisation *Jemaah Islamiyah*. One of the more outlandish criticisms was from 2GB radio commentator Malcolm T. Elliott who stated that the Indonesian judges presiding over the Corby case were "straight out of the trees" and that they "look like the three wise monkeys". The underlying assumption of such commentary was that the Indonesian legal system was flawed and inferior to the Australian legal system. In comparison to the hyperbole, there were relatively few attempts in the mainstream media to understand the underlying reasons for the differences in handling drug cases. Exploring the issue of sentencing offers a window on historical differences between Australia and South-East Asia that have been mistaken, and in some cases lauded, as backwardness.

Drug traffickers are punished severely in Australia. The penalty for bringing in a 'commercial quantity' of drugs carries a maximum penalty of twenty-five years for drugs that are not marijuana and ten years for marijuana. Many countries in South-East Asia take the penalties up a couple of notches into the same categories as murder, treason and assassination of senior state officials. In Indonesia and

Vietnam, trafficking drugs could get you executed by firing squad depending on the judges' discretion. Singapore, Malaysia and Thailand have mandatory death sentences for drug offences involving heroin and cocaine by either lethal injection (Thailand) or hanging (Singapore and Malaysia). The differences gain more clarity when we compare specific cases. The Bali Nine were accused of trafficking 8.3 kilograms and received either life sentences of twenty-five years each or, in the case of the two men designated the ringleaders, death sentences. A courier who brought ten kilograms into New South Wales in 1998 received seven and a half years while another case in 1996 in New South Wales resulted in a higher-level 'recruiter' being jailed for life with a non-parole period of sixteen years for conspiracy to import ten kilograms. Corby, who has famously been sentenced to twenty years in jail, would have received a sentence in the order of three years in Australia. Her 4.1 kilograms of marijuana was well under the amount considered a commercial quantity and she has no prior record of involvement with trafficking or dealing illegal drugs.

Before we explore the reasons for the differences between sentencing in Australia and South-East Asia, we first need to explore a common feature that underlies the operation of laws and governance in all modern nation-states. A feature of modern governance, when compared to earlier systems, is the regulation of more areas of people's lives in much more detail. From a Machiavellian focus on ensuring the continued existence of the monarch, modern governance is geared towards nurturing a populace. States today are concerned that the populations they



oversee are eating healthily, working productively, saving money and generally behaving in the way that will best ensure the prosperity and continuity of the nation. Laws, which previously were an expression of the will of the sovereign, are now one set of instruments amongst others that states use to organise and optimise populations. From defending the body of the sovereign, laws now are concerned with arranging, regulating and defending the national body – the people – from threats that could weaken or destroy its integrity. The changing purpose of laws can explain why drugs, as a direct threat to the national population, are linked to harsh sentences.

Differences in sentences are linked to broader differences between how South-East Asian nations and Australia have defined the lives and characteristics of their subjects. In South-East Asia, the national body is considered ‘Asian’ and defined in opposition to ‘Western’ nations. A key explanation for this divide is the features of colonial occupation in South-East Asia, in particular the size of the indigenous populations and their relationship with their colonial occupiers. The pre-colonial inhabitants were integral to the colonisers’ commercial activities. As the character of imperial governance and capitalism changed at the end of the nineteenth century, colonising countries began to educate and train local inhabitants. In Indonesia, the early nationalist leaders had undergone a European education and had absorbed European ideas about the differences between Eastern and Western nations. Debates in the 1930s about defining Indonesian culture amongst Indonesia’s leading writers and intellectuals, the most Westernised of all Indonesians, hinged on a differentiation of Eastern and Western cultures. The majority position was that Indonesians should adopt Western technologies while making sure Eastern spirituality was not tainted by Western angst and alienation.

After independence, the Indonesian nationalist Sukarno emphasised differences between Indonesia and the West as part of his attempts to unite Indonesians behind his leadership. While holding power in Indonesia in the early 1960s, Sukarno demonised elements of Western culture that he thought were weakening Indonesia. He condemned Western dances including the cha-cha and disco and forced haircuts on boys with long, Western-style hair. In the 1980s and 1990s South-East Asian leaders’ position on ‘Asian values’ continued to emphasise differences between East and West. Differentiating ‘Asian’ and ‘Western’ values was a well-used tool of South-East Asian states in their attempts to retain control over increasingly wealthy populations with greater access to alternative ideas and lifestyles and justify their autocratic policies to the international community. Constructions of ‘Asian-ness’ and ‘Western-ness’ have long had a central position within debates about South-East Asian identity and, extending from this, attempts to govern the behaviours and choices of South-East Asians. Hence the use of illegal drugs, with its connection to ‘Western’ celebrities and lifestyles, has met with little sympathy from South-East Asian governments.

Penalties for trafficking are harsh in all forms of modern government for two reasons. First, states want to prevent the penetration of substances and habits from outside that will pollute and weaken the population. Second, trafficking is a direct threat to modern states’ claim to legitimacy as the protector and cultivator of the nation. In South-East Asia, drugs are historically associated with Western culture. The response of South-East Asian states can be explained through the twin imperatives of protecting the national body from the harm of drugs and also protecting the culture of the nation from Western influences historically constructed as degenerate and foreign. From this perspective, drug trafficking is the worst form of outside attack on the national body. The sense of foreignness of drugs and the myth of cultural purity underlies the horrific sentences handed out to those who attempt to courier drugs through South-East Asia.

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