State-sanctioned killing

By Bill Calcutt
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Two issues have dominated the national public discourse in Australia over recent weeks, both of which relate to different manifestations of state-sanctioned killing. The first involved a sometimes highly charged discussion of the impending execution of two Australian citizens in Indonesia for their roles in a drug importation syndicate called the Bali 9, and the legal and moral foundations for capital punishment. In pleading for the commutation of the death penalty in the Bali 9 case the Australian Government enunciated its implacable opposition to capital punishment.

The second national issue was the commemoration of the centenary of the Anzac landings on the Gallipoli peninsula during WW1. It seems that the Anzac legend is becoming an increasingly important part of the national historical narrative, representing not only the horror and futility of war but also admirable virtues like comradeship, bravery and endurance in the face of adversity. A clear subtext in this narrative is that defensive wars can be just and honourable.

Societies determine the boundaries of civilised human behaviour, and laws define these limits. Most states have explicit rules that govern the circumstances where recourse to lethal force and state-sanctioned killing are justified. While civilian law enforcement officers are often armed and have standing authority to use lethal force against citizens, this power is only ever used in exceptional circumstances to protect life. Laws prohibit summary punishment and execution and due process is required to determine individual criminal culpability. Many societies have determined that the imposition of the death penalty for even the most serious crimes is unjustified.

In marked contrast to the constraints on the use of lethal force in an internal law enforcement context, the usual purpose for the deployment of military forces in an overseas armed conflict is to take the lives of alien combatants. War is a unique form of state-sanctioned killing that is regulated by international humanitarian law. Originally intended to minimise the suffering of casualties in armed conflicts between states, the Geneva Conventions articulate a series of binding principles (including necessity, distinction and proportionality) for the humanitarian conduct of international and internal armed conflicts and for the protection of civilians and the victims of war.

The different legal and moral justifications for state-sanctioned killing between citizen/criminal/internal/law enforcement and alien/armed conflict/overseas/military contexts have become increasingly blurred as the state has struggled to respond in a measured and effective way to the threat of extreme and indiscriminate ideologically-motivated violence against members of the community, sometimes by its own citizens. Now widely referred to as terrorism, the use of fear and propaganda to intimidate the community and elicit a repressive state reaction is a phenomenon that has been enabled by new technology and universal connectivity.
As deliberate attacks against innocent civilians and extreme violence are both explicitly prohibited under the Geneva Conventions (and may constitute crimes against humanity), terrorism does not qualify as armed conflict and its proponents are not recognised as lawful combatants. Several armed groups involved in internal armed conflicts in the Middle East have been designated as terrorist because of their deliberate attacks against civilians and responsibility for widespread atrocities. Largely unconstrained by international humanitarian law, authorities have employed a range of exceptional measures against terrorism targets including extraordinary rendition, enhanced interrogation techniques and extrajudicial killing. Unmanned drones, surgical air strikes and special and para-military forces have been used to kill terrorism targets in countries like Iraq, Afghanistan and Syria.

Australia has recently experienced a number of its citizens (mainly youth) reportedly travelling to the Middle East to participate in internal armed conflicts, apparently due to a profoundly misguided sense of heroic duty and self-sacrifice. In a number of instances Australian citizens have joined insurgency forces that have been designated as terrorist groups, and several nationals have been killed in terrorist-related incidents in the Middle East.

The Australian Government's attitude towards citizens travelling to participate in overseas armed conflicts potentially poses significant moral and policy dilemmas. The Government has recently expressed implacable opposition to the imposition of the death penalty in Indonesia, and the Australian Federal Police were criticised for alerting the Indonesian authorities to the impending drug importation given the possibility of the death penalty for those apprehended in Indonesia. In contrast, the Australian Government has pre-emptively criminalised participation by citizens in overseas conflicts, and has reportedly agreed to share intelligence on nationals travelling overseas with countries like Turkey and Iran. The sharing of intelligence on Australian citizens with authorities overseas clearly has the potential to facilitate their targeted killing as terrorists.

Give the powerful community sentiments that have been stirred during the course of the recent public debate over the death penalty and the inhumanity of state-sanctioned killing, it is essential that the community has a mature and informed discussion about the potential implications of Australian Government policy towards Australian citizens who are planning to participate in serious criminal activities overseas.

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