NEXT month marks the second anniversary of Van Nguyen’s death. The Government of Singapore killed him.

In Australia, the public mood was overwhelmingly against his execution. The struggle for his life was brave and tenacious. We will not forget the heroic efforts of Lex Lasry, QC, and Julian McMahon. We will not forget the anguish and torment of his family and friends as the fight to save the convicted drug trafficker continued.

Public sentiment against hanging Van Nguyen shows how far this community has matured since those days 40 years ago when Barry Jones led a similar struggle to prevent the state of Victoria from executing Ronald Ryan.

But the Australian public apparently supported the idea of executing Saddam Hussein, and the Australian Prime Minister wants to see the Bali bombers executed. How can these different attitudes co-exist in the same community?

There are some obvious differences: Van Nguyen hurt no one but himself; Saddam Hussein and the Bali bombers killed brutally and indiscriminately. But capital punishment is unjustified, no matter where, no matter what the crime, no matter who the criminal.

One of the most famous arguments against capital punishment was made by Clarence Darrow in his plea in the 1924 murder trial of Leopold and Loeb. It was a case that had the whole of the US baying for blood.

Nathan Leopold and Dickie Loeb were young, rich, brilliant and privileged. They came from the best families in Chicago. They decided to prove their intellectual superiority by committing the perfect crime. They kidnapped Bobby Franks. While Leopold drove the rented car through the streets of Chicago, Loeb sat in the back with Franks and killed him with a chisel. They drove out of Chicago looking for a place to dispose of the body. They stopped for a snack on the way. They stuffed the body into a culvert and headed home. Then they tried to extract a ransom payment from Franks’ father. It was an appalling crime, which made headlines worldwide.

Darrow, who normally acted for the underdog, was persuaded to take the case. He was passionately opposed to capital punishment. The state, the press, and the public were determined to see Leopold and Loeb hang.

In his plea, Darrow marshalled the key arguments against capital punishment.
First, capital punishment does not prevent or deter crime. That is the fact of it. It is not surprising: most murders are acts of impulse or passion. Most murders are not committed after calm reflection. Terrorists are unlikely to be deterred by the prospect of capital punishment — if they do not kill themselves in the course of their attack, they will likely be willing martyrs to the state. Capital punishment does not prevent crimes; countries that have abolished capital punishment have experienced no increase in the crime rate.

Darrow said: "Crime has its cause ... Perhaps all crimes do not have the same cause but they all have some cause. And people today are seeking to find out the cause. We lawyers never try to find out. Scientists are studying it; criminologists are investigating it; but we lawyers go on and on and on, punishing and hanging and thinking that by general terror we can stamp out crime ..."

"If a doctor were called on to treat typhoid fever, he would probably try to find out what kind of milk or water the patient drank, and perhaps clean out the well so that no one else could get typhoid from the same source. But if a lawyer was called on to treat a typhoid patient, he would give him 30 days in jail, and then he would think that nobody else would ever dare to take it. If the patient recovered in 15 days, he would be kept until his time was up; if the disease was worse at the end of 30 days, the patient would be released because his time was out."

Second, he spoke of the idea of an eye for an eye. Those who turn to the Bible for justification must reach back to the Old Testament: an eye for an eye, a tooth for a tooth ... But as Mahatma Ghandi said: take an eye for an eye and soon we are all blind.

Darrow said: "I could say something about the death penalty that, for some mysterious reason, the state wants in this case. Why do they want it? To vindicate the law? Oh, no. The law can be vindicated without killing anyone else. It might shock the fine sensibilities of the state's counsel that this boy was put into a culvert and left after he was dead, but, your Honour, I can think of a scene that makes this pale into insignificance. I can think ... of taking two boys, one 18 and the other 19, irresponsible, weak, diseased, penning them in a cell, checking off the days and the hours and the minutes, until they will be taken out and hanged ... I can picture them, wakened in the grey light of morning, furnished a suit of clothes by the state, led to the scaffold, their feet tied, black caps drawn over their heads, stood on a trap door, the hangman pressing a spring, so that it gives way under them; I can see them fall through space — and — stopped by the rope around their necks."

In Iran, mobile cranes are used to hang prisoners. The corpses are left hanging for all the citizens to see. Will this improve them or diminish them? For some offences, capital punishment of women is inflicted by stoning. It is a truly dreadful way to die. The victim, fully bound from head to foot in white bandages, is buried waist deep in the earth. Immobilised this way, she is pelted with rocks the size of fists. Because she cannot see the rocks coming, she cannot duck in anticipation, but flinches in response to every hit. The bandages are soon flushed with blood and gradually the body sags and collapses.

Any society that tolerates state executions is damaged by them.

Darrow told Judge Caverly: "If these two boys die on the scaffold ... the details of this will be spread over the world. Every newspaper in the United States will carry a full account. Every newspaper of Chicago will be filled with the gruesome details. It will enter every home and every family ..."

"Do I need to argue to your Honour that cruelty only breeds cruelty? That hatred only causes hatred; that if there is any way to soften this human heart, which is hard enough at its best, if there is any way to kill evil and hatred and all that goes with it, it is not through evil and hatred and cruelty; it is through charity, and love and understanding."

Third, and most important: capital punishment is the cold-blooded killing of a person by the power of the state. Let us not flinch from this: after investigation, trial, and appeals, after all passion is spent, the state coldly, deliberately kills a human being.
Albert Camus wrote brilliantly on this point in 1957: "An execution is not simply death. It is just as different from the privation of life as a concentration camp is from prison. It adds to death a rule, a public premeditation known to the future victim, an organisation which is itself a source of moral suffering more terrible than death. Capital punishment is the most premeditated of murders, to which no criminal's deed, however calculated, can be compared."

Darrow addressed the state's argument that the killing of Bobby Franks had been cold-blooded, and turned it back on them: "Cold-blooded? Why? Because they planned, and schemed. Yes. But here are the officers of justice, so-called, with all the power of the state, with all the influence of the press, to fan this community into a frenzy of hate; with all of that, who for months have been planning and scheming, and contriving, and working to take these two boys' lives.

"You may stand them up on the trap-door of the scaffold, and choke them to death, but that act will be infinitely more cold-blooded ... than any act that these boys have committed ... Cold-blooded!

"Let the state, who is so anxious to take these boys' lives, set an example in consideration, kindheartedness and tenderness before they call my clients cold-blooded."

Then there are those who turn to holy scriptures for guidance in these matters. To justify the execution of murderers, they turn to the sixth commandment: thou shall not kill. It is one of the most basic moral lessons and the most universal. Not surprising perhaps, given the individual self-interest we all have in it being a general rule. But capital punishment breaks this rule just as surely as murder does.

Here, the proponents of capital punishment will object that there are exceptions to this rule; and there are: killing in a time of war, and killing in self-defence. To this, they will add that capital punishment is a form of self-defence: it is the way society defends itself against those who violate its most important rules. But even this argument for capital punishment breaks down.

Killing in war and killing in self-defence both have limits. A soldier cannot deliberately kill civilians, or prisoners, because they are not a threat to the life of his country. Self-defence has to be a reasonably proportionate response to the attack. A person who kills an intruder in the course of warding off a deadly attack will successfully argue self-defence. It will be quite different if he overpowers his attacker, ties him up, and a few days later coldly strangles him to death. That is not self-defence; it is murder.

So it is with capital punishment. A convicted criminal may need to be punished to set an example to the rest of society; he may need to be locked away to protect society from the risk he presents. Killing him in cold blood offers no more protection than locking him up; it is just a premeditated killing, animated by a base desire for vengeance.

As a society, Australians seem to have accepted that capital punishment is calculated murder by the state; that the state should set an example in showing respect for the sanctity of life; that capital punishment exposes the darkest corner of our soul. If those are our principles, we should be consistent in them: capital punishment in Guantanamo, or Singapore, or Indonesia is as bad as capital punishment here; Saddam Hussein was a human life just as Van Nguyen was a human life. Respect for human life must mean respect for all human life.

If the Australian Government is opposed to capital punishment, it must condemn it in absolute terms, not contingently. If it opposes the death penalty for the Bali nine, it should oppose the death penalty for the Bali bombers. We must speak out against capital punishment in all forms, in all places, unconditionally.

Van Nguyen broke the law; he was foolish; he hurt no one. The Government of Singapore killed him. Let his death not be pointless: it is a reminder that we must oppose state-sponsored killing in every case, everywhere.

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