

Advice that must be heeded

WHILE I am in general agreement with those of your correspondents who are opposed to capital punishment, I must dissent from the attack on the Governor's personal integrity made by Mr Rear in your columns on Monday when he says:

"If the Governor is himself an opponent of capital punishment then his surrender to pressure from his advisers is a betrayal of his principles, which must appear not as an act of courage but as an act of weakness. If he is himself in favour of capital punishment, then his decision not to reprieve Mr Tsoi in this place nevertheless appears unjust and cynical."

I do not know what the Governor's views are on capital punishment, but it is not, in my judgment, clear that he is entitled to put his personal principles above his general duty to maintain the "peace, order and good government" of this colony.

When hanging was still the punishment for murder in England at least one Home Secretary was an opponent of capital punishment before becoming a minister, but nevertheless allowed a number of murderers to be "ritually strangled" (Mr Rear's phrase) without advising the Crown to exercise the prerogative of mercy.

Presumably in these cases he believed that his responsibility to Parliament and the public required him to suppress his personal views.

This is not cynicism or weakness, but a conflict of duties, which must be frequently felt by any person holding high office who is torn between what he would like to do as an individual and what he believes to be in the best interests of the organisation, firm, ministry or colony of which he is head.

Mr Rear does not quote paragraph XXXIV of the Royal Instructions in full. The complete sentence runs:

"The Governor shall not pardon or reprieve any such offender unless it shall appear to him expedient to do so, upon receiving the advice of the Executive Council thereon; but in all such cases he is to decide either to extend or to withhold pardon or reprieve, according to his own deliberate judgement, whether the Members of the Executive Council concur therein or otherwise, entering, nevertheless, on the Minutes of the Executive Council a Minute of his reasons at length, in case he should decide any such question in opposition to the judgement of the majority of the Members thereof."

This makes it clear that the Governor's power to act against the majority of the Executive Council is only a special case of his general authority to go against the majority (paragraph XII).

But such an act is, and is expected to be, extremely rare.

I have checked through the minutes of the Executive Council from 1936 to 1939 (the latest peacetime years for which the records are open) and there is not a single instance where the Governors of Hongkong in those years acted against the majority advice of their Executive Councils, including all

cases of executions and reprieves.

It is a most likely assumption that a majority of the Executive Council advised Sir Murray that there should be no reprieve in the case of Mr Tsoi.

However, a number of your correspondents have suggested that in this case the Governor should reprieve Mr Tsoi, ignoring the opinion of the leading citizens of this community, both Chinese and European who have the responsibility of advising the Governor on the Executive Council, and also the views of the mass of the public, which I would guess, as in Britain, are strongly in favour of capital punishment.

In my judgment, it might be politically possible for a popularly elected governor to act in this way in advance of popular opinion, but not possible for an expatriate governor who is appointed by the Crown.

Parliament in Britain can legislate against the trend of public opinion because all its members have been elected by the people and most will offer themselves for reelection.

This legitimises their decisions, and they are expected, by a long tradition of political thought, to give a lead to the public, rather than merely act as delegates reflecting the opinions of their supporters.

The Governor of Hongkong is in a much weaker position.

British rule in this colony rests on the consent (or apathy) of the majority of the population and on the active cooperation of the Chinese elite.

Otherwise it could not survive.

This continued partnership cannot be taken for granted if Government flouts their wishes.

As Sir David Trench said in his Dillingham Lecture, "We have to operate much more on the basis of a consensus of opinion than if we had a parliamentary majority which could bulldoze through any measures it liked."

Mr Rear confuses what is legally within the constitutional power of the Governor with what is *politically* possible according to the conventions (unwritten rules) that have become established over the years.

The oldest of these conventions, which can be traced back as far as the declaration of Captain Elliot of 1841, is that on social questions the British Government will not attempt to impose its views upon the Chinese majority.

I am sure that it must have been an agonising choice for the Governor to consider whether there was sufficient opposition to the death penalty in the Chinese

community to justify him in granting a reprieve.

But if the leading Chinese members of the Executive Council who are chosen as his advisers on such matters did not recommend this course, I suggest that he had no alternative but to confirm the death sentence.

It is presumptuous to suggest that the Governor would have taken such a decision out of cynicism or weakness rather than out of a profound sense of what is politically possible for a foreign government set over a predominantly Chinese community.

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South China

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