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UNITED STATES OF AMERICA

Hypocrisy or human rights? Time to choose

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The United States of America is promoted by its leaders as the global human rights champion. President Clinton, for example, told the Democratic National Convention not long before he left office that “we are the leading force for human rights around the world”. President Bush has continued in much the same vein, proclaiming in his recent State of the Union address that “America will always stand firm for the non-negotiable demands of human dignity”. These non-negotiable issues, President Bush said, include “the rule of law” and “equal justice”.

Napoleon Beazley lives in the USA. He is due to die there shortly after 6pm on 28 May, killed by Texas executioners. How does this fit with these presidential assertions?

On 14 August 2000, the day that President Clinton told his party that the USA was the most progressive force for human rights, the UN Sub-Commission on the Promotion and Protection of Human Rights affirmed that the use of the death penalty against child offenders – defendants who were under 18 at the time of the crime – violated customary international law. It called on offending countries to stop the practice. The USA, failing to stand firm for the rule of international law, has ignored such calls. Napoleon Beazley, aged 17 at the time of his crime, is the next target of this shameful policy. His would be the 10th execution of a child offender in the United States in the past five years, twice as many as the rest of the world combined. Three others are due to be put to death in the US in June and August. If they are killed, the United States will have executed as many child offenders in three months as the next worst perpetrator, Iran, has carried out in the whole of the past decade. President Bush said that “no nation is exempt from the demands of human dignity” when he was in China in February 2002. The USA should direct this sentiment to itself and at the very least do what China, responsible for most of the world’s executions, nonetheless did five years ago. In 1997, China abolished the death penalty for those under 18 at the time of the crime.

What about President Bush’s claim that his country would always stand firm for “equal justice”? Napoleon Beazley is African American. He was convicted of the murder of 63-year-old white businessman John Luttig, who was shot at his home in Tyler, Texas, on 19 April 1994. Citing “substantial contact with the family of the victim”, the prosecution

refused to consider a plea arrangement whereby Beazley would plead guilty in return for a life sentence of 40 years without parole. The same prosecutors accepted just such an arrangement in the case of a Todd Rasco, a white man who was sentenced to 45 years in prison, with parole eligibility after half that time, for killing 63-year-old Ivan Holland, a homeless black man who lived on the streets of Tyler. Todd Rasco testified that when he told his two friends that he was contemplating suicide, they had urged him to “just kill a nigger instead”.

Napoleon Beazley’s jury was all-white. Challenged about the state’s dismissal of a number of prospective black jurors, the prosecutor explained that he had rejected one because a dozen years earlier he had been charged with driving while intoxicated (DWI). Although the man had been acquitted, the prosecutor believed that his experience would make him biased against the state. Notwithstanding this, a white juror was selected who had actually been convicted of DWI, and had also been fined within the previous three years for public drunkenness. Apparently the prosecution felt that he would not be biased against the state.

But was this juror prejudiced against the defendant? It later emerged that he harboured severe racial prejudice against blacks. In his own words on the trial’s outcome, uttered to a defence investigator two years after the trial, “the nigger got what he deserved”. The juror’s wife confirmed that her husband routinely used the word “nigger” to describe African Americans, and said that she would “find it difficult to believe that [he] could have set his prejudice aside and not let it influence him in some degree”. He was not helped in this by the prosecutor who, arguing for execution, described Napoleon Beazley as an “animal” whose “prey... happened to be human beings”. In a separate case, the Sixth Circuit Court of Appeals in 1998 noted “the history of racial stereotypes against African-Americans and the prevalent one of African-Americans as animals...”. Did the prosecutor’s depiction of Napoleon Beazley stir prejudice in the all-white jury? It certainly had the potential to do so.

Also voting for execution was a woman who appears to have been a long-time employee of one of John Luttig’s business partners. This was not made known at jury selection. Nor was her presidency of the local branch of the United Daughters of the Confederacy, a heritage organization dedicated to the memory of the South. She has flown the confederate flag at her house, and features on a website with a confederate flag. This does not prove racial bias, but as a senior federal judge wrote recently, it is a legitimate cause for concern: “It is the sincerely held view of many Americans, of all races, that the confederate flag is a symbol of racial separation and oppression. And, unfortunately, as uncomfortable as it is to admit, there are still those today who affirm allegiance to the confederate flag precisely because, for them, that flag is identified with racial separation. Because there are citizens who not only continue to hold separatist views, but who revere the confederate flag precisely for its symbolism of those views, it is not an irrational inference that one who displays the confederate flag *may* harbor racial bias against African Americans”.¹

Many people, including a former Texas death row warden, 18 state legislators, the prosecutor from Napoleon Beazley’s home county, and even the judge who oversaw his trial and set his execution date, have appealed for clemency. What about the federal government, which must ensure adherence to the USA’s international obligations? Perhaps President

¹ *Blanding v USA*. US Court of Appeals for the Fourth Circuit, 18 May 2001. This opinion was written by the Honourable Michael J. Luttig, the son of John Luttig, the murder victim in the Beazley case.

Bush could look to the example set by his counterpart in Pakistan. At the end of last year President Musharraf announced that he would commute the death sentences of all child offenders in his country. Under the US system, President Bush may not have the power to do that, but it is beyond question that an intervention for commutation by him would carry great weight with the members of the Texas Board of Pardons and Paroles, a majority of whom are still his appointees. A presidential clemency appeal would be in line with his State of the Union assertions, as well as the promise he made in his inaugural address to be a President who would “speak for greater justice and compassion”. Or were these just hollow words?