

Death penalty analysis is a real lifesaver

NEVER have those of us who oppose the death penalty felt more convinced that we are right. And never has there been a series of more impressive-sounding arguments to suggest that we are wrong.

For most of the past century we have been secure in the belief that executing murderers does little to stop murder. That's what the psychologists and the criminologists have told us.

But now economists have entered the debate. And they have brought to the task a dazzling range of highly sophisticated techniques originally developed to answer more prosaic questions, such as whether tax breaks encourage saving.

More often than not the economists find that executions do save lives.

The most dramatic finding comes from Joanna Shepherd and a team at Emory University in Atlanta. They have taken advantage of the fact that some parts of the US don't execute murderers, and only a handful of states execute them consistently. (One of those states, Texas, accounts for more than one-third of the executions in the US since the Supreme Court lifted the ban on capital punishment in 1976.)

After taking account of other regional variations thought likely to influence murder rates - among them the mix of races and the resources devoted to policing - they found that executions explained most of what was left.

As they starkly report their central finding: each execution results in an average of 18 fewer murders. Or, to present the finding in an even more unsettling way: any state that refuses to impose the death penalty for



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Economists argue that executing murderers is morally necessary.

murder is condemning 18 or so innocent people to death.

It is a dilemma that those of us who abhor the death penalty would prefer not to think about. Now two professors from the University of Chicago have decided to make it acute.

Cass Sunstein and Adrian Vermeule set out their arguments in a paper to be published in this month's *Stanford Law Review*. It is provocatively titled: *Is Capital Punishment Morally Required?*

They say that if the findings of the economists are correct, or anything like correct, a serious commitment to the sanctity of human life might well require, rather than rule out, the use of the death penalty.

I should point out that their argument applies only to the use of death penalty as a punishment for murder. They acknowledge that the issues are less clear when it is imposed as a punishment for carrying drugs, as it was in Singapore last week for Australia's Nguyen Tuong Van.

The first response of many of us would be to wonder whether the economists have got it wrong. But Sunstein and Vermeule have a comeback. They ask what our atti-



tude would be if it could be shown that capital punishment did save lives. Would we oppose it anyway?

They point out that in hostage situations where police have the option of ending one life in order to save maybe six or seven, most of us would support the use of deadly force.

What, they ask, would be so different about murder if it could be shown that ending the life of one convicted criminal would save the lives of as many as 18 other people?

One answer is that we can't be certain about the number of lives that would be saved by an execution. But Sunstein and Vermeule point out that we don't usually demand certainty before allowing the government to take action.

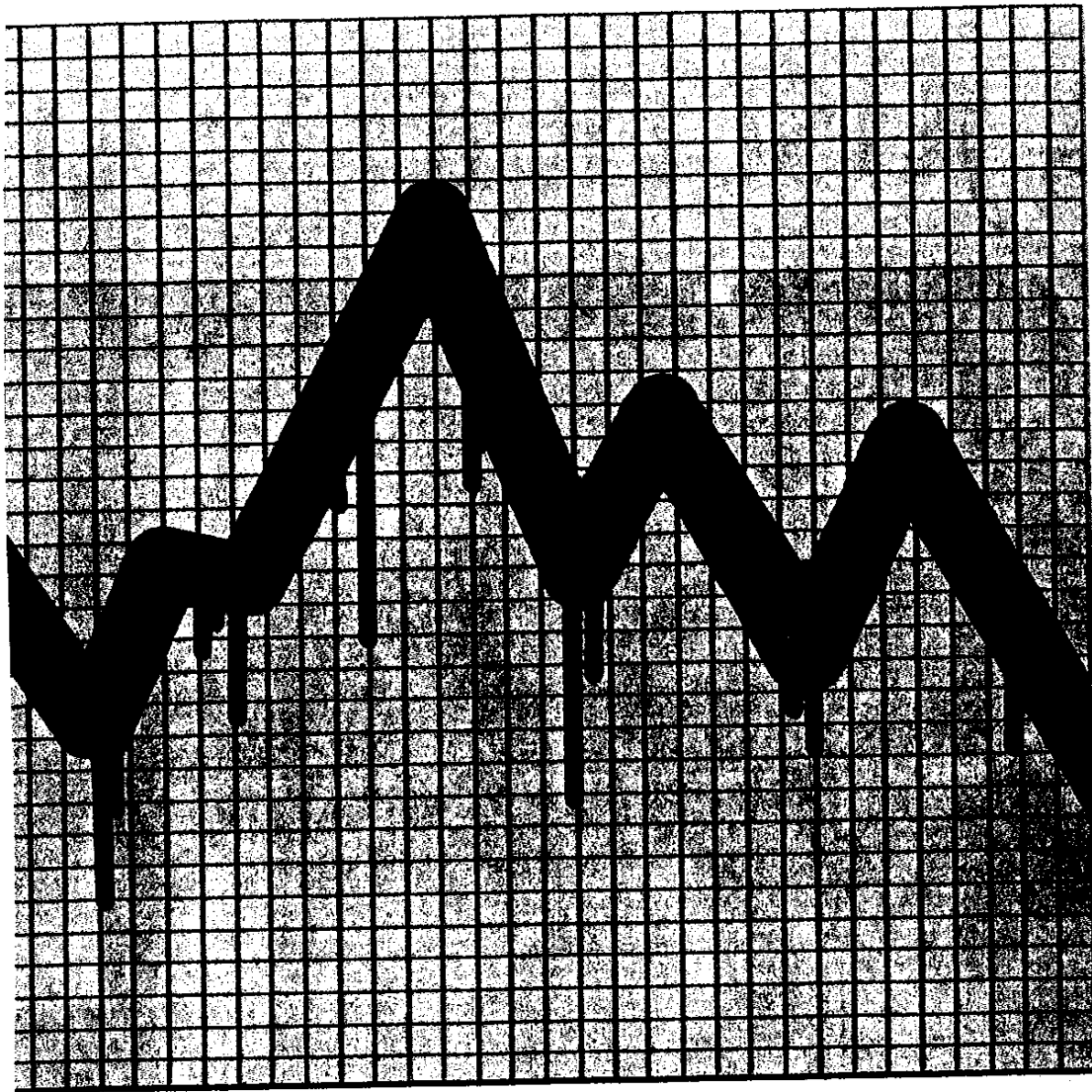


Illustration: John Shakespeare

Most of us have no idea of the number of lives that are saved by the law requiring the use of seatbelts, but we support that law nonetheless on the understanding that it will save at least some lives.

Another response is to say that there is a difference between intentionally killing someone and allowing even a larger number of people to die as a result of inaction. The first is morally wrong: forbidden by the injunction "Thou shall not kill." The second is a lesser sin.

The authors respond that this is not how we usually judge the decisions of the government. If it imposes only light penalties on the perpetrators of domestic violence, for example, we don't let it off the hook because it has merely refused

to act. Sunstein and Vermeule say that refusing to use the full force of the state as a punishment for murder comes "perilously close to licensing private killings".

Fortunately the journal also includes responses to the paper, one of them co-written by an Australian economist now with the University of Pennsylvania, Justin Wolfers. He gets me off my ethical hook.

Wolfers re-examines the data used by the team from Emory University and finds that when it is treated correctly it no longer shows that each execution saves about 18 lives. Instead it shows that each execution brings about an extra 18 deaths!

It is a result that Wolfers himself does not take seriously, just as he

does not take seriously the initial claim that the death penalty saves lives. His broader conclusion is that the data is so difficult to interpret as to make it impossible to say with any certainty what effect the death penalty has. He says it is not reasonable to build an entire moral case around an effect that cannot be shown to exist.

He might have added: particularly when the end result is an injunction to kill people.

I am relieved to be able to put the arguments of Sunstein and Vermeule to one side for the moment. They were beginning to get to me.

Peter Martin is the economics correspondent for SBS television. Ross Gittins is on leave.