

# Ethnicity overlooked?

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*ALRC recommendations for reform may be ignoring significant cultural differences between different ethnic communities.*

The recently completed *Multiculturalism and the Law*<sup>1</sup> report from the Australian Law Reform Commission has thoroughly canvassed the issues of access and equity which arise in connection with the administration of the criminal justice system in a culturally diverse Australian society. It has made a number of sensible and achievable recommendations for reform which, if they are implemented, will go a long way toward addressing well-known and long-standing injustices which are experienced by ethnic groups when they come into contact with the legal system in Australia.

However, as a result of recent research in the Vietnamese community in South Australia,<sup>2</sup> I see difficulties arising in the implementation of some of those reforms. If the commission's recommendations are to be implemented, it is clear from the report that one of the key ways to facilitate the changes, especially those to do with education and support services, is to channel funds for services through mainstream ethnic community organisations. However, my research suggests that this may not be effective where issues to do with criminal justice and the Vietnamese are concerned. Internal cultural contradictions, and attitudes towards crime and criminals in this community exist and cannot be legislated, or funded, away. Unless we deal with significant, specific, cultural differences in any given ethnic community – in this case the Vietnamese – we are in danger of defeating the very reforms we are trying to achieve.

While the research not unexpectedly reveals a widespread ignorance of the Australian legal system, respondents were found at the same time to hold firm views on questions relating to criminal justice. These views were surprisingly harsh in terms of the kinds of punishment which respondents thought should be meted out to offenders, and did not exclude capital punishment. The idea, too, that prisoners could have rights which should be defended, was also difficult for respondents to understand. These attitudes and other factors, go some way to explaining a further finding of the research: that is, the reluctance of 'mainstream' Vietnamese organisations to be involved with helping those of their country of origin who break the law.

The research also suggests that being a refugee adds a layer of difficulty to successful adaptation to Australian society which is not experienced by the voluntary migrant. Without an understanding of this 'refugee' factor as well as the specifically cultural attitudes towards criminal justice, generalised reforms like those proposed by the ALRC report, may still be insufficient to address issues of access and equity, in this area, in the Vietnamese community.

To understand how the barriers to reform arise we therefore need to consider a number of issues:

- the confusion which surrounds the nature and meaning of multiculturalism and how that idea, ideal or ideology limits our understanding of how best to proceed;
- what it means in this context to be a refugee;
- the history, values and beliefs of the Vietnamese in Australia; and lastly
- the nature of the Vietnamese population and their community organisations in Australia.

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An earlier version of this article was given to the Australian Institute of Criminology Conference, The Criminal Justice System in a Multicultural Society, held in Melbourne, 4-6 May 1993.

Where multiculturalism is concerned, the notion is accepted as useful by some, rejected outright by others and criticised by most – from every shade of the political spectrum. This means that there is no clear or shared meaning of multiculturalism and in that absence lies the difficulty of formulating and implementing policies. For example, the ALRC, in its terms of reference, adopted an uncritical approach to the term. It led to general recommendations which, in their very generality, rely not on a version of cultural pluralism but on a presumed homogeneity of diverse ethnic groupings.

The outcome of this approach can be seen in the amount of official discretion – in preference to the provision of a cultural defence – which is recommended in decisions to prosecute, in the recording of convictions and in the sentencing process. Police or judicial discretion is a precarious thing. It is very dependent on an individual's knowledge, socialisation and attitude to any other person different from themselves. How well, it must be asked, can an individual legal officer – even with extensive re-education – appreciate the subtleties of cultural difference which are required, if she or he is to administer this particular reform justly and equitably? We can see how difficult this might be in looking at the case of the Vietnamese in more detail, but first we must briefly understand the history, nature and composition of the refugee population in Australia.

Refugees from Vietnam bring with them the experience of 30 years of war where the rule of law had broken down and they also bring with them the memory of the pervasive destruction of their country, and their people.

Their values are predominantly those of Vietnamese Buddhism and these values are foundational to their way of life and their relationships with others. By far the most important of these values are those associated with the family, where

individual interest is subordinate to the welfare of the whole group. Strong and extremely complex bonds of filial respect combine with parental responsibility for the support and guidance of the young in a wide-ranging kin network. Family honour is paramount and stringent social censure is applied to family members dishonouring the family name. Should such a disgrace occur, families are accustomed to dealing with those matters internally and without help from outside. Thus honour is maintained without loss of face.

Traditional Vietnamese society is also patriarchal with a rigid division of labour between men and women. This does not leave women completely powerless, but does confine their decision-making influence to the domestic sphere. The obedience required of women and children to the male head of the household – be that the grandfather, father or elder son – also makes for authoritarian approaches to behaviour which, for children, is strictly, if lovingly, controlled.

### Ethnicity: class and religion

The Vietnamese who have settled in Australia are not a homogeneous group, nor are they representative of a cross-section of the population in Vietnam. There are four basic divisions within Vietnamese society. First there are the differences between people from the north and those from the south, which create mistrust between the two groups. Second there are rigid class differences within both these groups – between the educated city dweller and the rural peasant. Religious differences can be described as those existing between Buddhism and, predominantly Catholic, Christianity.

Finally, there are ethnic divisions between a native Vietnamese and a Chinese Vietnamese population, concentrated in the south, who are mostly business people. Culturally, the ethnic Vietnamese and Chinese Vietnamese do not interact.

A rough profile of Vietnamese refugees escaping between 1979 and 1982 would find that the majority were elite Northerners resident in the South, South Vietnamese elites, Catholics and Chinese.<sup>3</sup> They were the groups who had most to lose under a communist regime and, certainly in the early days, they were the 'richer, stronger and better connected groups' favoured to succeed in their escape.<sup>4</sup>

There are, however, other characteristics of the Vietnamese population in Australia which need to be taken into consideration. At the end of 1982, nearly 58,000 Vietnamese had entered Australia. They were a comparatively young group with large numbers needing employment and a high proportion of school age children.<sup>5</sup> There were very few elderly people. In the early years there was a distinct bias of males, a factor which is thought to be remedied now, and many refugees were unskilled by Australian standards. Fifty per cent of the population were married but did not necessarily have their spouses with them and there was an overall low number of complete families. As discussed earlier there were ethnic, class, regional and religious differences within the group with Catholics and Chinese Vietnamese being over-represented.

It also needs to be understood that refugees are different. They arrive in Australia possessing characteristics which differentiate them from voluntary migrants in important ways. These include, for example, the degree to which they may

have suffered from the violence of war or under politically totalitarian regimes, the amount of time, resources and money they had to prepare for departure, the important members of family who had to be left behind, the relatives who did not survive the war, the escape or the journey, the lengthy and uncertain time spent in unsanitary transit camps, and the overarching fear and anxiety which exists when the future is unknown. Each of these factors will affect the chances of successful settlement for refugees but what is more significant for one group or individual will vary according to culture and experience.

For example, between the years 1975-1982 there were large numbers of unaccompanied minors accepted for settlement in Australia. For some this was a successful process which resulted in eventual reunion with their own families. For others, it did not work for any number of reasons.

Leaving school for work was a solution for some, joining with other Vietnamese in shared housing helped others. Where these options were not available, however, where lack of language and skills spelled long-term unemployment, these young Vietnamese were vulnerable to existing street cultures, where there was every likelihood that they could be introduced to drugs and petty crime. In this they are no different from other young Australians in similar circumstances, although research indicates that crime rates for the young Vietnamese are proportionately about half those for the Australian born population.<sup>6</sup> Even so, a street lifestyle creates substantial problems for their relationship with Vietnamese community organisations where they might be helped. However, these organisations are the ones which the ALRC recommends be used to implement criminal justice reforms.

### Community organisations

There are a variety of Vietnamese community organisations now well established in Australia. Some exist to preserve the language and culture of Vietnam, some to provide welfare services to new arrivals and others are centred on members' ethnic or religious affiliations. As such they meet the needs of different sections of the community, and there is some overlap of membership and services between the various groups.

The structure, sentiments, politics and service priorities of Vietnamese community organisations naturally reflect the dominant cultural values of the founding members, who have now been in Australia for up to 15 years. Drawn from both North and South Vietnamese elites - professionals, high-ranking military personnel and the tertiary educated for instance - these community leaders tend to be largely male, conservative and, in the Vietnamese way of things, authoritarian. They command a great deal of respect in the community, wield considerable power and are staunch upholders of traditional Vietnamese customs and values.

If, however, individual Vietnamese do not fit into this conservative cultural norm it will be difficult to get help from such an organisation. A woman victim of family violence will not be able to confide her problem to a community worker, let alone be given the information and support she needs. Although Vietnamese workers may feel some sympathy for the victim, they also believe that this is a problem to be sorted out by the family, and is none of their business. Least of all is it the business of the police. It will be up to an Australian woman worker to help the Vietnamese victim of family violence and even then, cultural taboos and language barriers may prevent the victim from being able to protect either herself or

her children. The single mother is in a similar position, particularly if she is unmarried. To be in such a position is to be thought of as prostitute and beyond the pale of conventional society. Divorce or remarriage for women is also not sanctioned in traditional Vietnamese culture.

In the same way, young people unattached or detached from their families, who are in trouble with the law, will be reluctant to relate their problems to workers who, as more senior, and therefore culturally to be obeyed, not only disapprove of their actions in breaking the law, but also of their separation from the family. Family, in this case, can be the biological parent(s), older siblings, more distant relatives or even an Australian foster family. The vulnerability to homelessness, drug addiction and crime, of unattached or detached youth, has been recognised as a problem for some years, and grant-in-aid workers have been employed by community organisations to reach out to these youth. If the offending youth do not comply with the conventions, however, they will not continue to be helped. This will not be an outright refusal to provide advice or support but a more subtle lack of response. It may be that the workers themselves apply sanctions to services, or that they are directed to do so.

This pressure on individual Vietnamese to conform to conservative traditional mores, as a condition of membership of the group is very real and powerful. While it originates in a familial and religious orthodoxy, the Vietnamese in Australia have additional reasons for clinging to tradition. As refugees they did not make the decision to leave their country in the same way as do voluntary migrants, and they may well wish to keep their culture alive in case it becomes possible for them to return to Vietnam. This would be especially true where their children are concerned, whom they see as being constantly exposed to other cultural influences. There is also a class based concern to maintain a respectability which is connected to family honour. Vietnamese visibility in the criminal courts dishonours the individual family involved and, because it is a public process, the whole community. Dissociating the organisation from contact with even minor criminal elements, and ignoring the existence of all crime in the community, is thus one way of saving face.

### Internal cultural contradictions

The strength of the familial nature of Vietnamese culture is responsible for the strict social control which is exerted over, not only the young, but all members of the society. Unrepentant criminals, having breached this code of family honour, are ostracised from their own families and thus live marginalised lives in the wider society. What this means for the Vietnamese young men between the ages of 18 and 30 is that they are adrift in both their own and a foreign culture. Like their Australian counterparts, they may then construct a family of sorts amongst themselves, and maintain a system of core Vietnamese values which recognise, for example, the hierarchical relationships between elder and younger, the obligations of friendship and the importance of honour. Clinging to a somewhat basic and primitive expression of these values, which condone revenge and violent physical assault, they can also preserve the familial code of privacy which keeps members silent about their activities or conflicts, outside the 'family' circle.

Reverting or continuing to live in an all too familiar survival mode, where the young refugee has perhaps endured the

realisation of war, the terrors of escape, and the worst of these young Vietnamese males relate to the legal process according to their culture and experience. On the one hand this dictates a respect, deference and passive acceptance towards authority figures such as police, lawyers or magistrates, and a fear of divulging information, learned under the communist regime, where even the giving of your correct name and address could result in the disappearance of yourself or other family members. On the other hand, in a contradictory way, the Australian legal process holds very little fear for a Vietnamese law-breaker. Even in more serious offences, the process and a prison sentence will be more humane in Australia than that which could be expected in Vietnam. It is so possible that prison life could be more physically comfortable and secure than life on the streets, in Vietnam or in a detention camp. Thus, in the scheme of things, it may well be that a Vietnamese is unattached to a stable family, is unemployed, and marginalised in Vietnamese and Australian society, the threat of prison is an acceptable risk to run, for other needs to be met.

A further dimension of these culturally internal contradictions is the young law-breaker's response to police harassment. Although it can be experienced as fearful and unpleasant it is not seen as an infringement of rights or as a matter for complaint. Treated far more violently by the system from which they came, police brutality is not only to be expected but also to be endured. While Australian welfare workers would urge their Vietnamese clients to pursue complaints for harassment of ill-treatment, it is very unlikely that they will. It is also true that the Vietnamese know that they are readily identifiable in the general population, and a real fear exists that complaints may bring worse treatment in the future. Although it is necessary to facilitate access to independent police complaint authorities, as the ALRC has recommended, the research suggests that even then there will continue to be other factors which hinder Vietnamese use of such services.

From the point of view of the police there are also real difficulties for them in their dealings with Vietnamese offenders. The cultural and language barriers are substantial and there is a constant problem to provide the evidence which will bring a case involving Vietnamese offenders to trial. Faced with a wall of silence from potential witnesses who, with the best will in the world they cannot protect 24 hours a day, police must deal with high levels of frustration in this area of their work. The provision of police liaison officers dedicated to working with the Vietnamese has gone some of the way to building relationships of trust between the police and the Vietnamese community groups but this valuable work is easily undone if other police behave poorly.

### ALRC recommendations

It can be seen from this discussion that there may be barriers to suggested reforms in the Vietnamese community in a number of areas. First, the tendency of reforms, framed in the context of an unproblematic multiculturalism, to be unaware of significant cultural differences which can stand in the way of effective implementation. Although the crosscultural awareness training for legal professionals, and all those involved in administering the legal system, is a necessary and long overdue reform, it is unlikely that a full range of understandings will be available, in the Vietnamese community at least, if conventional community wisdom is to be the yardstick of what counts as cultural values.

Second, the ALRC is already aware of the special needs of women and young people within a number of ethnic groups, and suggests that research is necessary as a first step in identifying areas of particular need. My research confirms this finding and makes it clear that in providing information and support services through Vietnamese grant-in-aid workers, two important groups within this community – victims and perpetrators of domestic violence and young men detached from family networks – will be difficult to reach because they are ostracised from the community. Unless all ethnic group values are understood at this level of detail, criminal justice reforms are at risk of missing the very people they are designed to help. If what is true for the Vietnamese community is also true for other ethnic groups – especially those who come to Australia as refugees – it is clear that a great deal more research must be carried out if the persistent disadvantage suffered by ethnic minorities in their dealings with the criminal justice system is to be eliminated.

Lastly, by far the most serious barrier to reform of the criminal justice system is the provision of resources to implement the recommendations. The research and training alone will be very costly and may take years to complete. There will also need to be a considerable commitment to the process of reform from not only the federal and state governments and legal professionals, but also from the society in general. In straitened economic times where previously free services are increasingly provided on a 'user pays' basis – higher education, interpreting and even legal aid for instance – it is difficult to see that such a commitment will be forthcoming when it can be seen as being of benefit to only minority sections of the population.

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