

On the death penalty: fragmentary meditations

Sobre la pena de muerte: meditaciones fragmentadas

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Abstract

This short reflection attempts to meditate on the premise around which both proponents-of and those-opposed-to the death penalty hinge their arguments. And it makes the case that in-lieu of their premise being antonymous, or at least antagonistic — as might be expected — it is exactly the same: that even though they might come to diametrically opposite conclusions, both sides rely on the notion that life is sacred. By doing so, they are conceiving of it in the abstract, as abstractions; and thus, ignoring — or, at least, temporarily set aside — the fact that each life, and each living, including one's own, is irreducibly singular and should be considered in its concrete materiality, situation, and context.

More importantly, in order to decide in the abstract, what is actually done is to decide — *a priori* — what counts as a life.

This piece, thus, opens the potentially disconcerting possibility that — by acknowledging lives in their immanence, and attempting to respond to them as such — one's very responsibility lies in the fact that every moment of living is an act of choosing who, and what, one kills.

Keywords: death penalty, sacred, immanence, responsibility, ethic

Resumen

Esta breve reflexión pretende meditar sobre la premisa en torno a la cual articulan sus argumentos tanto quienes defienden como quienes se oponen a la pena de muerte. La tesis de este escrito se basa en que, aunque dichas posturas se presentan como antónimas, o al menos antagónicas — como se podría esperar — y pese a que podrían llegar a conclusiones diametralmente opuestas, ambas se basan en la noción de que la vida

es sagrada. Al hacerlo, conciben la cuestión en abstracto, como abstracciones; y de esta manera ignoran — o, al menos, dejan de lado temporalmente — el hecho de que, cada vida y cada existencia, incluyendo la propia, es irreduciblemente singular y debe ser considerada en su materialidad, situación y contexto concretos.

Más importante aún, para decidir en abstracto, lo que realmente se hace es decidir — *a priori* — aquello que cuenta como vida.

Este artículo, por lo tanto, abre la posibilidad potencialmente desconcertante de que — al reconocer vidas en su inmanencia e intentar responder a ellas como tales — la responsabilidad propia radique en el hecho de que, cada momento de vida sea un acto de elegir a quién y qué se mata.

Palabras clave: pena de muerte, sagrado, inmanencia, responsabilidad, ética

Some lives are grievable, and others are not; the differential allocation of grievability that decides what kind of subject is and must be grieved, and which kind of subject must not, operates to produce and maintain certain exclusionary conceptions of who is normatively human: what counts as a livable life and a grievable death.

~ Judith Butler, *Precarious Life*

Perhaps the question is not so much whether the death penalty is good or not. Not so much because it is a moot one — for, most questions of valuation are based on the criteria they are measured-by; thus, have less to do with what is being judged than the one doing the judging — but precisely because those who are for and those who are against it hinge their argument around the same premise: that life is sacred.

Proponents of the death penalty argue that since one has taken a life, one must then pay for it — one must be held accountable, one must be made to account for it. And since life is sacred, beyond the realm of the everyday, the quotidian, quite possibly even beyond what can be known — is transcendent, lies in the realm of the metaphysical — there is no other way to balance the books, as it were, than with the life of the one deemed to have first taken life. Where it is two unknowns which cancel each other out — this is also why one can ‘pay’ for multiple deaths with one’s life; not because quantity as such doesn’t matter, but that if there is no matter at play, we are no longer in the realm of quantifiability.¹ Thus, one must die.²

1. This could leave us with the — potentially intriguing — question: what is the weight of a life? One that cannot be responded to if we treat life as metaphysical; and might result in an even more banal, dehumanising, response if we start to calculate aspects of living, begin to decide, determine even, what counts as living and what does not make the grade, if we transform living into nothing more than figures to be entered into the ledger of an accounting spread-sheet. A third possibility might entail separating living from life: taking the former as immanent and the latter as transcendent, which would be a step in the direction of many theological positions, particularly those in the Abrahamic vein. Those of a religious bent might argue that this could be the best-approach: to treat what is knowable as knowable, and what is unknowable as a matter of faith. Which would be another way of saying ‘count what you can’ and ‘for what you cannot, take — on trust — that some higher being is keeping score’: in other words, “render therefore unto Caesar the things which are Caesar’s; and unto God the things that are God’s.” (Matthew 22:22) Others — probably myself included — would say that this might leave us worse-off: for now you would not only have a neo-liberal approach to living, there would always also be a spectre of life over-shadowing living, where this unknown lurks in the background, threatening to be an extension-of this accounting-system, often-times spilling over, intruding, into living itself — as exemplified in theocracies, but really even in so-called secular states (the fact that it is the sovereign, and only the sovereign, who has the power to grant clemency — that is forgiveness — in the event of a death sentence marks the disguised presence of the divine at the very heart of the state). Throw in concepts of ‘ever-lasting life’ alongside those of ‘heaven’ and ‘hell’ and we’re basically in a poem by Dante.

2. Which might well be why many idealist philosophers are such fans of the death penalty: for, they argue that to be a

Opponents, on the alleged other hand, argue that since life is sacred, one must not take it: and that, as Margaret Atwood elegantly and powerfully argues in *Cat's Eye* (1989), “an eye for an eye only leads to more blindness.” That legally killing someone — leaving aside whether that makes it legitimate or whether the act of killing someone continues to reside in some para-legal realm (a murder than isn't a murder because it is deemed to not-be so, is not named-as as such, not seen that way in the eyes of the law) — that executing someone for killing another does not bring back the one who is dead, the ones who are dead: for, there is no possibility of balancing the books, and all one is left with is more dead people.

So, an aporia — where the sacrality of life is both the limit and condition of both.

Or, if you prefer, an impasse.

Not because either side is wrong — at least not necessarily so — but perhaps, as Albert Camus (1970) continues to teach us,³ “Prometheus is both just and unjust, and Zeus who pitilessly oppresses him also has right on his side. Melodrama could thus be summed up by saying: ‘Only one side is just and justifiable’, while the perfect tragic formula would be: ‘All can be justified, no one is just.’ This is why the chorus in classical tragedies generally advises prudence. For the chorus knows that up to a certain limit everyone is right and that the person who, from blindness or passion, oversteps this limit is heading for catastrophe if he persists in his desire to assert a right he thinks he alone possesses (p. 231).

But what would “prudence” here mean?

After all, there has been a death — and, quite possible a senseless one.

One that the law not only has to judge, but — as part of its process — has to also address grievances, meet out punishments, perhaps even attempt to deter future occurrences (even

good citizen one has to submit oneself to the law all the way to the end: thus, one has to submit one's life itself to the law. And, should one break the law, one should not just resign oneself to the punishment, one should in fact rejoice that one will be punished — for, that would mean that one has finally acknowledged the truth of the law itself.

Oh yes, the state can have its poetic moments too.

For, once again, one has to bear in mind that — as Jacques Derrida continues to teach us — just because we've cut off the heads of kings doesn't mean we've gotten rid of the notion of the *divine origin* of both the state and authority.

3. So, maybe there is a life after death — or even (more tantalisingly), a living which continues after life has ended. After all, one can posit that everyone dies twice: once bodily, the other time when one has been forgotten. For the luckier among us, it goes in that sequence. For the less fortunate, one could well be forgotten before one dies: here, we might even speculate that being forgotten whilst alive might well be one definition of the living dead.

It also opens the delicious possibility that reading is a form of necromancy. Which makes the fact that we call attempts to interpret, thinking, argue, about laws a reading rather beautifully-apt, particularly in the context of this meditation: it were always about death.

if, perhaps especially if, the latter is an illusion); en bref, bring balance back to the system.

All whilst continuing to protect, as it were, the sacredness of life itself.

Which might be the very problem.

For, if life is sacred, it then remains beyond materiality, beyond matter — abstract.

And it is precisely the focus on the death penalty that allows one to look at life as an idea whilst missing all the death around us; to look at the forest and miss the trees, miss the fact that most of the trees might already be missing. This is, for instance, what allows vegans to argue until they are blue in the face about how eating animals violates life whilst ignoring the death of the plants they are consuming.

Where, all that is done is that an *a priori* decision has been made with regards to what counts as a life.

Perhaps then, instead of abstracting life, we might attempt to think of the immanence of the living. Which means that every living being is unique, singular, aeconomic, non-exchangeable — where each living being is quite possibly unknowable, wholly other from ever other.⁴

Which then also opens very uncomfortable, potentially disconcerting, dossiers, notions, questions — such as the fact that every meal is a murder.

Thus, “prudence” is not so much a middle-ground — or, even worse, a moral high ground where one can wash one’s hands clean — but the very opposite. It is the concrete place, space, moment in which one bears in mind, along with all the weight that it brings, that one is only able to live, that one is only living, due to the death of countless others.

And that one’s very responsibility — for, living always already entails responding to and with others, every other, including quite possibly oneself — that one’s being in the world, hinges around the fact that every moment of living entails, involves, is an act of, choosing who, and what, one kills.

4. Which, to be fair, is precisely why pronouncements of guilt are accompanied — limited even — by the phrase, beyond reasonable doubt. Innocence is presumed; and guilt always only probable: in recognition of the fact that unknowability is always haunting all judgments. That even when there is allegedly irrefutable-evidence, one should try not to forget that *forensics* is the *tekhnē* of *prosopopoeia*; that is the craft of making something or someone speak for us, or against another, *as if* they are speaking for themselves. That it is us who be animating the knife to speak as if it is testifying for or against something; that the so-called smoking gun which seems to be bearing witness to the event remains — and always will be — utterly and potentially painfully silent. That its eternal silence quite possibly always and continually haunts, perhaps even judges, any judgment, all decisions, based on it. Not that we will ever know.

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