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The Metaphysical Underpinnings of Capital Punishment: A Preliminary Investigation

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Abstract

The combination of conservative ideology, an increasingly repressive political discourse, and a Federal government comprised of politicians who support capital punishment, has created an environment in which the chances of the reinstatement of capital punishment are increasing. Politicians will likely call a referendum on capital punishment following the commission of a brutal act of violence, and the debate will be charged with esoteric notions of evil infecting an otherwise pristine social body. Those of us who oppose the penalty will likely respond with rational arguments about the inefficacy of capital punishment to quell violence, and attempt to meet a discourse of a metaphysical evil with the discourse of scientific criminology. Our position can only be strengthened by understanding the psycho-social aspects of support for the death penalty. Do current means of executing convicts draw upon religious iconography? Is capital punishment a rational legal response to a rights violation, or a spiritual practice that appears to benefit both the killers and the killed? And is there a connection between the death penalty and ancient forms of human sacrifice which sought to satisfy the urge for violence by banishing violence to proscribed arenas, thus maintaining social stability?

As it stands, the Federal government could be seen as nudging us towards the reinstatement of the death penalty. Our Minister of Justice has openly called for the “return of capital punishment” (Boswell, 2009). In 1999, the Reform Party—which is effectively in power now—introduced a death penalty bill

(Bill C-335). As Public Safety Minister, Stockwell Day refused to seek clemency for a Canadian on death row in the U.S. In response, the Canadian Bar Association resolved that the government is implying “that the DP may be appropriate for some Canadians” (2009). And when Canada recently refused to co-sponsor a U.N. Resolution calling for a worldwide moratorium on capital punishment, Amnesty’s Canadian Secretary General asserted that “Canada is taking a step backwards,” that is, towards re-institution (CBC, 2007).

Those of us who oppose state killing could find ourselves arguing against those who would like to see Sodium Thiopental and Potassium Chloride replace treatment programs in prisons. But reasoned argument alone will not be sufficient to counter an attempt to reinstate the death penalty in Canada, primarily because the death penalty is not only, or even primarily, a rational legal response to a rule violation. On a social level, it is more similar to the ancient practice of human sacrifice, which was a form of ritualistic killing. In this respect, state execution is more of a cathartic sacrament that allows society to mobilise a collective attack on a victim it perceives to be an infectious element in need of purging from society. It accomplishes a result similar to that of the ancient practice, namely, the stabilisation of the social order by reinforcing the transcendental intuitions that connected individuals through a shared cosmology (Girard, 1972, p.287).

This short paper is an attempt to draw out the ritualistic and metaphysical aspects of capital punishment. Hopefully, a broader appreciation of the complexity and subtlety of the punishment’s appeal will increase our chances of countering potential reinstatement in Canada. On the one hand, the argument against utilitarian justifications of capital punishment is relatively straight forward as it involves empirical analysis of the relationship between the presence of absence of the death penalty and murder rates. Although these analyses yield results that can be less than clear, the question itself is simple enough. On the other hand, retributive justifications of capital punishment are obscure, and often Gordian, in relation to

utilitarian ones, and they evoke more reactionary responses to interpersonal killings. To understand the notion of desert in the context of state killing, I believe, it is necessary to consider the metaphysical framework within which state killing occurs, and to which it simultaneously appeals.

On one level, legal discourse creates a veneer of reason that facilitates our perception of capital punishment as a rational response to an objectively defined violation of law. But on a deeper level, there are procedural elements of the death penalty that imbue the process with an air of ritualism, which in turn, intuitively engage our mythological and metaphysical convictions about the cosmic struggle between good and evil. This is all to say that theorising and practising justice vis-a-vis state killing are far more complex and amorphous than discourse alone can capture. Comprehending and fighting the injustice and tenacious presence of capital punishment requires examination of the supernatural no less than that of the economic, political, and moral. A good place to start is by looking at how media reports executions. First, these reports are the only lens through which the public experiences state killing, and secondly, these reports are a particularly powerful means of ritualising an inmate's legalised death.

Despite the diversity of convicts, media reports contain two core elements: a play-to-play description of the prisoner's last moments, and a detailed description of what he ate before dying. These elements are often reported with a degree of importance that rivals that of the crimes themselves.

The *Atlanta Journal*, for example, reported that Ted Bundy violently raped and murdered over thirty women, some so brutally beaten with logs that their brains were exposed. It also emphasised that he declined to state a preference for his last meal, and instead was served the traditional steak and eggs, juice, hash browns, and coffee. It is important to note: he did not eat (Boul, 1989). John Wayne Gacy, notes the *Associated Press*, stuffed underwear in the mouths of over thirty young men, pulled a board against their throats, and raped them until they died. He stored the corpses in his home's crawl

space, and he ate fried chicken, french fries, a cola, and fresh strawberries, before dying (Fordahl, 1994). Why this fascination with last moments and last meals? Is the slow burn of indigestion a form of cruel and unusual punishment deserving of sodium bicarbonate?

The reason the media fetishises these aspects of state killing is because it is a way of ritualizing capital punishment. As a ritual, the death penalty contributes to the maintenance of the social. It reinforces social mythologies that encourage individuals to integrate into their community, and it sanctions “the existing social order and justifies its status and power structure” (Barbour, 1976, p.23-4). Myths articulate society’s spiritual foundations, embody a community’s ideals, and express its prevalent attitudes and characteristics. They also imbue our lives with a depth of meaning that transcends the doldrums of daily living and provide a sense of being connected to something larger than ourselves. Joseph Campbell (1986) identifies the single feature that unites all mythologies: “The universally distinguishing characteristic of mythological thought...is an implicit connotation...of a sense of identity of some kind...which unites behind the scenes the opposed actors on the world stage” (p.81).

This echoes Schopenhauer’s century-old work “Transcendent Speculation upon an Apparent Intention in the Fate of the Individual,” in which he asserted that it is difficult to look back on one’s life as a series of disconnected happenstance (cited in Campbell, 1986, p.81). As Campbell (1986) observes, it is tempting to compare one’s biography “to that of a cleverly constructed novel, wondering who the author of the surprising plot could have been” (p.82). These connections between myth, metaphysics and biography are grounded not in reasoned thought, but in intuition. Interestingly, support or opposition to the death penalty are similarly situated.

Individuals often buttress their support for capital punishment with intuitive knowledge constructs that exist deep within their psyches and which are likely “formed during childhood” (Tyler and Weber, 1982, p.41). Those who oppose the death

penalty, however, tend to rely more upon reasoned thought, as is suggested by the fact that increases in education correlate with decreased support for capital punishment (Soss *et. al.*, 2003, p.414). The death penalty does not deter crime and is therefore not justified with reason. But the retributive perspective does not engage one in the same way. The notion of dessert requires an intuitive connection between murder and execution: vengeance is a desire, not a conclusion. And since mythology engages the same intuitive processes as retributive thought, it makes sense to explore the connections between support for capital punishment and mythology. The obvious place to start is with the crucifixion of Jesus: like ancient human sacrifices, ritualised killings replicate the violent origins of the social order (Girard, 1972). As a cultural founding, the crucifixion was an historical event to which “...the universe declares itself in a particular way around some group or events which thus take on cosmic significance. These events then become, and naturally, a self-appointed model which enables us to be articulate about what has been [revealed]” (Ramsey, 1964, p.58). In other words, an event assumes (in this case) theological significance, and in so doing establishes a model or a kind of interpretative guide with which to understand analogous events. In this regard, the crucifixion of Jesus and state executions are related.

Jesus was killed after the first night of Passover, which is a celebration of freedom. Passover mythology culminates with God killing every Egyptian first born male, to encourage Pharo to release the Hebrews, on the one hand, and as proof of his love for his people, on the other. So the backdrop of the crucifixion is a relationship between deliberate, sanctified killing and national freedom.

Passover is also focused on food: the Seder plate is laden with symbolic victuals that are the focal point of the holiday's rituals. At the core of the Seder is matzo, or unleavened bread, because it is the last meal the Jews consumed before their release to freedom. Notably the holiday of Passover places premium importance on this last meal by requiring Jews to refrain from eating risen bread.

In the New Testament, Jesus's last supper is one of the bible's most important parts. For some Christians, the last supper creates the Eucharist, which, generally speaking, is a ritual that connects the temporality of individual existence with the timelessness of divinity (Wenham, 190-, p.301).

Jesus passed out bread and wine as symbols of his body and blood saying "take this and eat; this is my body" (Matthew 26:26). Facing execution, Jesus appears to have used food to begin his transition from life to death, a process referred to as transubstantiation. Similarly, the last meal begins the transition from life to death for those on death row today. It formally marks the ending of life's essential processes, as well as the beginning of the execution procedure. The food that sustains life is now a vehicle of death, and the one eating has entered a kind of hinterland that mediates the travel from the temporal to the transcendental. Like the Jews escaping the evil of captivity, the convict's pure spirit is to be freed from its body, infected by evil. His death may not save others, but it saves him.

Media and webcasts often discuss the last moments and hours of a convict's life (Housley, 2005).¹ This creates an ethos of hyper-reality, and ultimately, a sense of timelessness. It correlates with the cinematic technique of focussing closely on seemingly irrelevant events: black coffee flowing into a red mug, ice dropped into a heavy glass with a clink. We become flies on the execution chamber's walls, numb to the ensuing violence, numb to ourselves. We have thus joined he who is about to die in an experience of timelessness, the transcendental in plain view ahead.

There is a dualism that dogs Christianity and which finds a correlate in the two dominant views of capital punishment. On the one hand, the material view of Jesus attends to the historical reality of his life as a man who sought to resist the political domination of the Roman Empire by holding himself out as the King of the Jews. On the other hand, there is the mythical view of Jesus as the son of god who died to free his people from sin. These perspectives align with our dominant ways of thinking. The material view of Jesus coincides with the 'logical'

opposition to capital punishment, which admits the futility of the punishing of individuals who face often desperate circumstances that push them beyond their limits. The mythical view of Jesus aligns with intuitive forms of support for capital punishment, which view it as a sacred ritual that balances the cosmic order of good and evil. Indeed, by occluding the reality of a psychopath's history with the romanticisation of his brutality, we invite a mythological interpretation of the death penalty, and by implication, its support. We begin with what is, in reality, an interpersonal manifestation of violence that is likely symptomatic of prior violence and/or cruel social circumstances. We transform it into a symptom of a transcendental sickness or evil whose treatment requires a sacred ritual that speaks to the gods, as opposed to an examination of the material circumstances of the way people actually live. Ergo, status quo.

In mythicising Jesus's death, Paul drew heavily on Gnosticism, an earlier religion that centralized the metaphor of human sacrifice as being part of the seasonal renewal process. The myth of Jesus's death and rebirth reflects Paul's Gnostic roots in that it forges a connection between killing and renewal. Subsequent to Gnosticism, one of Judaism's aims was to find a way to maintain social order without need of human sacrifice. But in his creation of Christianity, Paul reinvigorated the older idea of ritualised killing in order to maintain life and purify the soul (Maccoby, 1982, p.116.). Interestingly, this is the dominant justification for capital punishment today: to fight the evil that threatens society's ethico-spiritual fabric and to free the offender's soul from its evil infection.

On November 10, 2009 in Texas, Valle Yosvanis was executed for murder. His last words reveal the internalisation of some of the myths that the ritual of capital punishment is meant to endorse, primarily, individual accountability and redemption.

I am sorry... I never wanted to kill. I am sorry for the way I talk in English. I was a gang member. I was forced to do this. I blame myself. I am sorry with all my heart. That's the reality of life. I got to pay for it. To my family,

I love you. They have family too; I am asking you to go and give them hugs. Please accept their hugs. Be strong in the Lord. I love you all, please go and try and talk to the family. I understand why I am paying this price. I am ready Warden, I did it. Thank you brother, don't hate nobody, I feel good. I love my family, I love you Jesus. Be strong mama, I love you sister. I love Jesus. Warden I am ready. (Texas Dept. of Criminal Justice, n.d.)

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Endnote

1. The report contains 27 detailed chronological entries over 14 hours, itemising Tookie Williams’ execution in 2005.