

JACQUES DERRIDA'S THE DEATH PENALTY AND THE PARADOXICAL NECESSITY OF ABOLITIONIST AND ANTI-ABOLITIONIST CLAIMS

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Abstract

Both abolitionist and anti-abolitionist views thus make claims to truth on the basis of interpretation of divine law, and yet what both views fail to account for is the Christian passion which does not hold a sinner accountable to his crime with the passion of Christ in which Christ cancels our debt by bearing our sin and forgiving our sin. Hence both laws uphold a need to hold a person accountable to his actions and the necessity of punishment and retribution while the Christian paradox is precisely a cancellation of debt, a relieving of accountability for one's actions, a forgiving of the unforgiveable.

Keywords: Death penalty, Christianity, Impossibility, Abolitionist, Anti-Abolitionist

In Jacques Derrida's *The Death Penalty*, the aporia between abolitionist calls for termination of the Death penalty in the name of Christian regards for the sacredness for life such as Victor Hugo's views on the necessity of abolishing the death penalty in respect for the inviolability of human life and the contrasting anti-abolitionist view which views the Death penalty as a sacred injunction to uphold a divine law in the manner of Kant's categorical imperative and God's decree to take the life of one who has killed another is examined. Derrida describes the deadlock as one between Christological transcendence and immanent humanism which does not subscribe to a divine order beyond the laws of the visible on earth. Ironically, both abolitionist and anti-abolitionist views uphold their own sacredness, in the view of the abolitionists it is the interminable and sacred right to life that is being upheld and in the case of the anti-abolitionists the necessity of not transgressing a divine law decreed by God that man shall not kill and be punished for taking another's life.

As with most of his writing, Derrida holds that both abolitionist and anti-abolitionist views require one another and the truth is rather to be found in the third space of paradox which is neither abolitionist nor anti-abolitionist but to be found in the supreme paradox of the passion in which Christ substituted our debt with his restitution and cancelled the debt of our sin by taking on the role of a Creditor who takes our place for the punishment of sin and cancels our debt by suffering in our place- this paradox of substituting the forgiveness of sins for punishment- forgiving the unforgiveable- is Derrida's response to the necessity of the death penalty.

This third space of forgiving the unforgiveable and cancelling debt is neither abolitionist nor anti-abolitionist but between and beyond and a space that enables the thinking of both as the difference between both abolitionist and anti-abolitionist views because it moves beyond the realm of holding the death sentence holder accountable for his crime and moves into the realm of cancelling debt and forgiveness.

Derrida begins the book by examining a series of death sentences that have taken place in history- Jesus, Socrates, Hallaj and Joan of Arc who made blasphemous claims to be representatives of the divine and messengers of the truth. The paradox of these death sentences was that it was precisely these divine agents who embodied divine messages who were put to death for making true, rather than false claims to embody truth. The conflict was with authorities who construed their claims to truth as blasphemy and put them to death. Derrida thus exposes the paradox that worldly authorities execute divine agents on their own charges of blasphemy and thus the death sentence is in this case a violation of divine law by imposing man made and anthropomorphic judgements upon divine agents who exist beyond the necessity of law. The aporia between the transcendent and the material is thus examined. It is man's law which is anthropomorphic and insufficient to account for divine law which puts these divine messengers to death.

Derrida moves on to juxtapose the abolitionist views such as Victor Hugo who call for the death penalty with anti-abolitionist views such as Camus and Nietzsche. The abolitionist views are made on the basis of the cruelty of the death penalty and the sacredness of man who is set apart from animals. Derrida further argues that these proponents of the abolitionist view have the hidden agenda of preserving their own lives because they fear death. Anti-abolitionist views found in Nietzsche and Camus argue against the sanctity of human life and the inviolability of human life on the grounds that man is not sacred or holy but no different from beasts as there is nothing sanctified or superior about man compared to animals. Again Derrida's response is that it is neither Victor Hugo or Kant or Camus and Nietzsche who hold the unequivocal truth as each term requires the repudiation of the opposing term to be upheld. It would be impossible to conceive of the inviolability of human life without its opposite view for Nietzsche who holds there is nothing particularly precious or sacred about human life and hence the truth is neither abolitionist nor anti-abolitionist but between.

Both abolitionist and anti-abolitionist views require the thinking of the opposing term to be upheld. It is necessary for the abolitionist to exclude anti-abolitionist views to be coherent, and hence proponents for the inviolability of human life need to recognize that they require the exclusion of the opposing term which is the non-sacredness of human life to be upheld.

These terms exist and have meaning relative to each other, hence it is the difference, paradox between these opposing terms and the Derridean third space that enables the thinking of both that is the truth, and this Derridean third space as I have mentioned earlier is a step beyond thinking the law and holding one accountable to the law to move into the impossible- which is forgiveness and cancellation of debt as Christ's passion and incarnation made possible.

It is the impossibility of Christ's incarnation and forgiveness of sins that makes the law possible as Christ came to fulfil the law rather than to defeat it. Derrida's injunction to forgive the unforgiveable and move into a Derridean third space of thinking the impossible forgiveness of sins and holding one accountable to the death penalty for transgressions committed is an extension of his meditations on hospitality and forgiveness, extending Christian charity, forgiveness and hospitality as a move that exceeds the law and exceeds the thinking of the

possible but it is precisely this impossibility of grace, mercy, Christian charity and forgiveness which makes the law possible just as the exception is necessary to thinking the rule.

While most anti-abolitionists wish to uphold the integrity of the state and its sovereign law, it is precisely the possibility of exceptions to this law such as the forgiveness and cancellation of debt which enables the thinking of the law as it is its conceptual opposite and one term such as the upholding of the law requires the exclusion of the opposing term such as the cancellation of debt in order to be upheld. Derrida thus makes a compelling case for thinking the impossible forgiveness and mercy as the exception that makes possible the rule of the law and the upholding of the legal necessity of the death penalty.

Derrida's arguments in the death penalty are a continuation of his efforts to think the quasi-transcendental or the Derridean third space of the neither/nor. In earlier meditations of this topic, I have discussed this quasi-transcendental in relation to phenomenology. It is neither the transcendental nor the empirical which enables the thinking of philosophy from Husserl to Heidegger but the Derridean third-space, the quasi-transcendental, that which is neither transcendental nor empirical but which enables the thinking of both.

In like manner Derrida's quasi-transcendental to be found in *The Death Penalty* is the Derridean third space of hospitality and forgiveness, that which exceeds the thinking of both the rational abolitionist and anti-abolitionist claims. Both abolitionist claims and non-abolitionist claims requires the repudiation of the opposing term in order to conceptualize each other.

For instance, it would be impossible to conceive the sacredness of human life without its opposite, the banality of human life, each term requires the exclusion of the opposing term for the distinction to be upheld, and hence it is not Victor Hugo, nor Nietzsche who holds the absolute truth but a space between and a step beyond, thinking the impossible that enables both through the difference between the two which enables both, however unlike most meditations on the quasi-transcendental the Derridean third space in *The Death Penalty* is not a mere difference which enables conceptualization but a sacred third space which goes beyond the thinking of both rational sides of law and responsibility to a sacred space of moving beyond the law altogether into a space of forgiveness and cancellation of debt that was brought about by Christ's incarnation and passion.

Derrida thus makes a meditation on the divine law that has enabled the thinking of both abolitionist and anti-abolitionist proponents which is the returning of the right of originating the law to God, in the case of the Abolitionists such as Victor Hugo they hold on to the sanctity of life and its inviolability as something Christ would uphold, and yet the anti-abolitionists too hold on to the view that the law that sanctions the death penalty such as subscribers to Kant's categorical imperative is divine and not of a worldly origin as God made the instruction to put to death anyone who has violated the law or taking another person's life.

Both abolitionist and anti-abolitionist views thus make claims to truth on the basis of interpretation of divine law, and yet what both views fail to account for is the Christian passion which does not hold a sinner accountable to his crime with the passion of Christ in which Christ cancels our debt by bearing our sin and forgiving our sin. Hence both laws uphold a need to hold a person accountable to his actions and the necessity of punishment and retribution while the Christian paradox is precisely a cancellation of debt, a relieving of accountability for one's actions, a forgiving of the unforgiveable.

This is the paradox of Christian charity, it gives and takes the place of sin and wrongdoing, in response to wrongdoing, one is told to turn one's cheek, in response to one's enemies, one is told to forgive, in response to debts accumulated and owed, one is called to

cancel one's debt and forgive, it is a giving in place of receiving, taking the place of he who has sinned and replacing indebtedness with forgiveness and cancellation of debt. While this may seem impossible to worldly eyes, Derrida precisely views Christianity as an impossible religion. I will further discuss Christianity as an impossible religion in discussing Derrida's reading of Jean-Luc Nancy's deconstruction of Christianity in the next section.

In *On Touching Jean-Luc Nancy*, Derrida brings together many phenomenological themes. I will discuss the condition of possibility for phenomenology in this section as iterability, differance and the quasi-transcendental. Derrida discusses his notion of aporia as fundamental to his conception of phenomenology. Thus while Jean-Luc Nancy privileges touch and deconstructs Christianity, Derrida demonstrates that his position is quasi-transcendental, neither intuitionist as Husserl nor corporeal as Jean-Luc Nancy and Merleau-Ponty would have it, neither Christian nor non-Christian, but a space between. Indeed Derrida argues that Jean-Luc Nancy, in privileging corporeality and touch, shares much in common with Merleau-Ponty.

Derrida argues that while Jean-Luc Nancy seeks to deconstruct Christianity and thus deviate from it, one can never be certain that there is no transcendental beyond. Derrida thus again posits undecidability and unpredictability as the only certainties one has. Derrida argues that the spirit of Christianity, while being purged from Heidegger's text through his destruction, haunts it, just as Christianity haunts the text of Jean-Luc Nancy. A reversal of metaphysics and spirit, only repeats it as a ghostly double of the text that returns to haunt it. Derrida also argues that unless Christianity can be adequately exemplified by the empirical manifestations of Christian culture, deconstruction of Christianity itself remains an infinite task as Christianity is a faith in things unseen and spiritual rather than its concrete manifestation in Christian culture. Derrida thus demonstrates that Christianity remains undeconstructible in its concrete manifestation because it is about a transcendental beyond that exceeds the empirical rather than that which can be adequately represented by the empirical.

Derrida asserts that it is impossible to determine if Psyche is extended as she "knows nothing of this" and "nothing of herself". Derrida argues that psyche is characterized by paradox—she is tangible and yet untouchable. Psyche cannot be reduced to touch, as this is a simple reversal of the phenomenological reduction, a reduction of the intelligible to the sensible. Whereas metaphysics is characterized rather by iterability, or the repetition of the transcendental in the empirical. Psyche is not separable from touch or reducible to it, psyche can only be mediated through touch. Psyche's extension marks an aporia and paradox where the sensible and intelligible are conjoined through the passage of differance, hence it is insufficient to lapse into transcendental idealism like Descartes and Husserl or empiricism like Levinas, Blanchot, Ricoeur, Heidegger or Merleau-Ponty. This thesis has argued that truth is neither transcendental or empirical, but quasi-transcendental, the difference between the transcendental and empirical which enables the thought of both. Psyche is not reducible to extension, nor is psyche reducible to pure mind or spirit as a disembodied consciousness. This was argued in the chapters on Husserl on the occasions that he performs the phenomenological reduction, because disembodied mind translates into an absurdity. Psyche has to be incarnated in extension and body through iterability, it knows no existence separate from this corporealized and mediated state.

Derrida demonstrates that there is no fundamental difference between Nancy and Descartes in their arguments as each reduce phenomenology to either mind or body when it is actually the mediation of mind and body. Derrida argues against Descartes that the mind is reducible to one part of the body in his theory of the pineal gland. Derrida argues that Nancy's inversion of mind into a spatialization as body is just as contradictory as Descartes' reduction of

mind to one point in the pineal gland. Both are reductions. Derrida argues for a quasi-transcendental nature of truth as something between an improbable pineal gland and a mouth before speech, instead of privileging either mind or body, Derrida argues that truth is neither but the mediation or iterability between mind and body. A reduction of mind to body or body to mind translates into an absurdity as the transcendental has to be mediated by the empirical. This thesis has argued that iterability and signature enables concepts and the ideal to come into being, only in and through the real through repetition with a difference. It knows no existence outside this mediated and iterable state as there is no difference between the transcendental and empirical. Phenomenologists have created an aporia by separating the transcendental and empirical when there is no difference between them and the transcendental is nothing outside the empirical, just as the empirical is the necessary trace of the transcendental that brings it into being and does not exist outside of it.

Derrida observes the paradox that Freud would affirm transcendental intuition rather than negate it as is traditionally supposed. Derrida goes on to note that extension as described by Kant is not a purely empirical concept, after subtracting empirical qualities from the object such as impenetrability, hardness, colour. There still remains the intuitive qualities that form empirical objects such as extension and figure. Derrida thus observes that Kant detaches from empiricism the intuition of extension and figure which is not reducible to empiricism but precedes it, yet in this detachment, removes essence from its exemplar which lands metaphysics in an aporia, without organs, without objective knowledge. Extension is thus ‘not touchable through the senses’ – it is not an empirical but an abstract quality, yet is not separable from sense. Derrida argues for the conjunction of the transcendental and empirical- the transcendental is not separable from the empirical- and this prevents the reduction of phenomena to pure illusion, as Berkeley discovered, without leading us to the paradoxes that Berkeley’s absolute idealism entails in reducing phenomena to pure subjectivism. Derrida would argue that the transcendental is only enabled through its iteration as the empirical. The aporia of metaphysics is thus resolved by this positing of the quasi-transcendental, which is the repetition of the transcendental in the empirical. The ideal is nothing outside the real. Concepts are irrevocably mediated, only existing through iterability and signature.

Nancy begins by considering the fact that Christianity can be reduced to a religion of flesh and blood. Nancy pronounces this an easy task, but Derrida implies that it overlooks the transcendental and otherworldly aspects of the religion by reducing it to something corporeal and empirical. Derrida describes this expulsion of spirit from Christianity as paradoxical : creation without creator, without principle and end. Derrida describes the body as a prosthesis- technics and a technical appropriation of the “phenomenological” threshold of the body proper. As body is technics and prosthesis, it seems contradictory to describe it as its own rejection where one separates mind and body and reduces Christianity to a religion of flesh and blood. As Derrida argues, it leads only to paradox, aporia and madness – the rejection of spirit is a madness and impossibility for Christianity which is based on such a notion of spirit and otherworldliness.

Derrida further outlines the paradox of Christianity as a religion of flesh and blood- of creation without the creator, and the impossible. It is a madness of flesh excised from spirit, in a reduction of Christianity to the material. Derrida terms this “corpus of sense and thus in all sense, but without possible totalization”, a madness because Christianity excised from spirit and the transcendental beyond is a paradox and impossibility. It is simply not conceivable. As Christianity is essentially an otherworldly and spiritualized religion, it is impossible to conceive of a material Christianity or a Christianity separate from the transcendental beyond that it is

essentially premised upon. A materialized Christianity is a madness as it overthrows the fundamental assumptions about the religion- that a transcendental beyond exists and determines the sphere of the empirical. Derrida's intervention is not that Christianity is an impossibility but an impossible possible enabled through differance and iterability, Derrida does not dispute the transcendental but only argues that it has to incarnated or mediated through the empirical in order to come into being.

Derrida demonstrates the undecidability of truth in a climate of religious pluralism. It is impossible to decide between Christianity and Islam, or Judaism; even as a globalatinization of Christianity has taken place and Christianity has become the universal religion. Derrida argues that non-Christian culture and Christian culture are the same rather than mutually exclusive or different. Religions are interchangeable, and the universalization or globalatinization of Christianity does not entail its Absolute status as truth. The transcendental of Christianity is not determinable as the absolute in a climate of religious pluralism because with the effacement of the transcendental signified comes democracy, the absolute status of one religion over another remains something that cannot be determined and undecidable.

To elaborate further on mediation, touching is a paradoxical activity because it conjoins the sensible with the intelligible and links the touchable with the untouchable. The sublime can only be expressed through the finite in thinking, thus rendering accessible the untouchable and unthinkable. Imagination enables the possibility of the impossible, possibility auto-affecting its essence of non-essence by bringing the transcendental into being through iterability and mediation. Imagination thus enables the thinking of limit which is otherwise unattainable, a thinking of the impossible, a mediation of the transcendental in the empirical through iterability and signature.

Derrida argues that his emphasis has been on exemplariness and mediation. He has emphasized the example as symptom of metonymy, a part that stands for the whole, a figurality and a figural substitute which supplements the whole that he has been talking about in elaborating Nancy's philosophy of touch. Touch can only be exemplified through the metonymy of hand as it knows no other instantiation, just as the transcendental is nothing outside the empirical it displays itself in as we have been discussing in earlier chapters.

Derrida further elaborates his philosophy of iterability and mediation, eidetic intuition is always tactually filled in. Hence touching is no longer a cause amongst others as it conditions these eidetic intuitions and is coextensive with them. By metonymy, touch is a substitute for sensory faculties, which Husserl has bracketed out in his eidetic reduction. While Husserl privileges intuition as the experience of the present, Derrida argues that touch is precisely what enables the experience of presence in general. Husserl's intuition has to be mediated through the senses in order for presence to be experienced, this is what he has omitted in his phenomenological reduction.

Derrida again emphasizes mediation as he cites Husserl trying to examine a heart sensation. This heart sensation is a phenomenological localization which is distinct from the intuition of extension. As Derrida notes, Husserl seems embarrassed to admit the affective warmth the heart sensation connotes as it would imply mediation and contradict everything his solipsistic transcendental reduction reduces phenomena to in negating the movement of iterability and mediation. Derrida emphasizes that this mediation is a tactile localization. Derrida notes this as an experience of touch with touches the untouchable, feels through bodily surfaces, and thus can only be enabled through mediation of intuition in sense, or repetition of the transcendental in the empirical.

Derrida examines the debate between Merleau-Ponty and Husserl: Merleau-Ponty argues that experience has to be incarnated in the flesh. Husserl, with his purifying reductionist tendencies, would never concede to his. As Derrida appropriates Merleau-Ponty, meaning is figurative and metaphorical, rather than idealism or existing in a transcendental solipsistic vacuum devoid of mediation, embodiment, incarnation or iterability. Derrida argues that Merleau-Ponty inverts and reverses Husserl only to repeat Husserl. While Husserl and Merleau-Ponty take on positions which seem directly antithetical to each other- truth is rather quasi-transcendental, or the space between transcendental and empirical. Derrida argues that Merleau-Ponty reappropriates Husserl's intuitionism of the ego into an Other directed and intersubjective phenomenology of corporeality. Derrida argues that this substitution of ego with Other is a repetition, no substitution is possible, rather if substitution takes place it is the substitution of non-substitutable as a paradox, of unique egos and unique others, this is Nancy's paradox of the singular plural. Derrida argues that self is not reducible to Other just as the Other is not reducible to the same. Yet these are related through repetition and iterability. Self is a function of the Other as the same and repetition rather than being wholly Other or wholly distinct, as Derrida argues with his notion of auto-affection, relation to self as other is the foundation and condition of possibility for relating to Others.

On incarnation, Derrida notes that the word *leibhaftig* turns up in both Husserl and Heidegger, and yet paradoxically their philosophies do not embrace its implications- incarnation implies mediation rather than entailing a privileging of transcendental idealism for Husserl or empirical anthropologism like Heidegger. Incarnation implies the mediation of the transcendent in living flesh, it is the bridge between transcendental and the empirical as the transcendental has to be incarnated as living flesh in the empirical in order to exist through iterability, it knows no other form of existence. While eidetic intuition is separable from body or flesh, it knows no existence outside of it as it has to be incarnated in the empirical to come into being, just as Husserl's history is the incarnation of the condition of possibility of the transcendental rather than something reducible, contingent and accidental. Incarnation implies iterability- it is not an intertwining of mind with body like Merleau-Ponty who is more interested in embodiment and corporeal living conditions of perception, but a mediation of the transcendental in the empirical which is the condition of possibility for metaphysics and thus phenomenological thought. Phenomenology has failed to recognize this necessity of incarnation, or iterability, and the space between the transcendental and empirical which mediates both as the quasi-transcendental as its very condition of possibility.

Derrida argues that divinity and logos is expressed and incarnated in the empirical – God is incarnate through his Son as man. Divinity and grace from the Father can only be concretely manifested through acts of love exchanged between humans and Christ. Chretien acknowledges this when he speaks of veiling, mediacy, and the immediacy of human touching. According to Aristotle, man is a tactile being, man experiences divinity and the transcendental through touch and empirical acts of love. Through his discussion of incarnation, Derrida further highlights iterability as the condition of possibility of transcendental genesis. Transcendental has to be incarnated through the empirical through repetition with a difference, the transcendental knows no existence outside this incarnation or iteration.

Derrida argues that philosophy is constituted by non-philosophy, or differance. It is the experience of the tactile, for example in kissing, that constitutes divinity and transcendental experience. It brings into communication two beings through auto-hetero-affection, for example, through the meeting of eyes, speech and the declaration of love, all concrete manifestations of

love. Paradoxically as we have examined before, the authentic philosophical act is suicide: the condition of life is death as its limit, philosophy is determined by non-philosophy, love is constituted by acts of love. Through all these run the notion of mediation and the repetition of the transcendental in the empirical. This is the quasi-transcendental nature of truth- presence has to be bifurcated a priori through absence and determined by non-presence in order to come into being. Non-presence, or differance, is the condition and source of philosophy rather than its shadow.

Derrida notes that metaphysics has been characterized by the thinking of limit from Aristotle, Hegel and Kant and philosophy, through mediation, brings about the thinking of the impossible, the inclusion of outside in the inside, conjoining the untouchable with the touchable, the thinking of the intangible. To touch is to gain access to what otherwise remains a limit and a border, and to transgress to the other side, much like deconstruction transgresses philosophy with its thinking of aporia and the delimiting of limit, to render accessible and make possible what had been previously impossible, deconstruction is the thinking of the impossible possible. While Nancy argues that touch is finitude, Derrida argues that touch is a thinking of transcendence because touch renders accessible the untouchable, renders tangible acts of love as the impossible mediated into the possible, with kissing and the touching of eyes. Derrida affirms the paradox of translation and iterability of the infinite in the finite with Nancy's work, as he has done with so many of the phenomenologists we have been reading in this thesis. Derrida affirms the aporia of metaphysics that the untouchable is rendered only through touch and intangible love is rendered only through physical or embodied acts of love.

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