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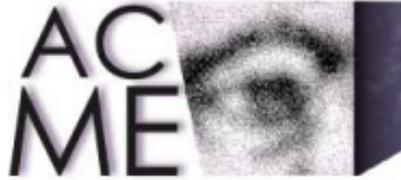
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Bare Life, Dead Labor, and Capital(ist) Punishment

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For a justice system to be unjust, it doesn't need to convict the wrong individual; it only needs to judge in the wrong way.
Foucault, 2000, 429

On September 21, 2011, two men—Troy Davis and Lawrence Brewer—died. Their deaths were planned, organized, and staged. They were not, however, murdered—at least, not according to our juridical discourse.

In certain respects, the state-sanctioned executions of Davis and Brewer were mirror images. Davis, an African-American man, was convicted for the murder of Mark MacPhail, a white, off-duty police officer. Brewer, on the other hand, was a self-described white supremacist convicted for the death of an African-American man, James Byrd. A black man kills a white man; a white man kills a



black man. Both were found guilty; both were sentenced to die.² Justice had been served in a post-racial state.³

Or was it?

In the years and months, days and hours leading to the execution of Davis, an African-American man, an outcry of monumental proportion echoed around the world. Davis continued to proclaim his innocence; indeed, no physical evidence was ever discovered that linked him to the crime. Furthermore, seven of the nine witnesses who testified against him later recanted their statements. Numerous public and political figures, including the Pope, called for clemency. Brewer, conversely, admitted that he (along with two accomplices) slit the throat of Byrd, chained him to the back of a pickup truck, and dragged him down a country road. Afterwards, Brewer reportedly wrote that he was no longer a ‘virgin’; that it was a ‘rush’ to kill, and that he was ‘licking his lips’ for more. Prior to his execution, when asked if he was repentant, Brewer said ‘no’, that he had no regrets, and that he would do it all over again if he could. There was minimal support for Brewer, a ‘white’ man, prior to his execution; there were no last-minute attempts to save his life.

The execution of Davis reinvigorated a long-standing and racialized debate on the practice of capital punishment in the United States—a debate that reaches back to the founding colonies transplanted from England (Banner, 2002; Bedau and Cassell 2004). The execution of Brewer, however, has not, or only minimally, been factored into these debates. This is in part a recognition that Brewer confessed, that he was unrepentant, that he was guilty. The guilt of Davis, on the other hand, *remains* elusive. Prior to his execution, doubts existed as to his guilt; and with the finality of capital punishment, we will forever question whether the state killed an innocent man.

And therein lays the debate—albeit misplaced, as we argue. We must resist the temptation to debate capital punishment on the basis of knowledge—or ‘truth’—and of guilt or innocence. To focus our conversation solely on the guilt or innocence of Davis (and to neglect the execution of Brewer) is to draw attention to, but not counter, the underlying knowledge (or science) that permits the taking of life. ‘If only we can perfect our knowledge of the guilt of the condemned,’ we say

² Studies have consistently shown that African Americans found guilty of murdering whites are significantly more likely to be sentenced to death than whites found guilty of murdering African Americans. See NAACP (2013) and Death Penalty Information Center [<http://deathpenaltyinfo.org/race-death-row-inmates-executed-1976>].

³ As the contributions to this special issue indicate, the articulation of ‘race’ with respect to the executions of *both* Davis and Brewer is exceptionally problematic. Our position, as we develop, is that racism strongly informed the trial and guilty verdict of Davis; however, it is a mistake to render his death solely to ‘race’. More precisely, (white) American society has demonstrated a willingness to put to death persons of all ‘races’—although to be sure, African-Americans are disproportionately sentenced to death and they are more likely to be executed. However, debates must incorporate more strongly a class-dimension, as the trial of O.J. Simpson clearly demonstrated.

to ourselves, ‘we may execute without the burden of our own potential guilt’. ‘If only we could take life without undue cruelty,’ we lament, ‘can we rest easy knowing that justice has been served.’ On these grounds, the perfection of knowledge—whether it is achieved via confession or science—will determine our use or dis-use of capital punishment.

But this is, literally, a dead-end, for it is based on the presumption that capital punishment *should* be continued; that it is only our inability to ensure the guilt of the condemned that is at stake, rather than the practice itself. We counter that Troy Davis should not have died that warm, autumn evening; not because he may have been innocent, but because capital punishment is morally wrong. Such an argument, of course, leads to the unpalatable conclusion that Lawrence Brewer also should not have been killed that night.⁴

How are we to approach the execution of *both* Davis and Brewer? And, of equal significance, what do their executions say about contemporary American society? Michel Foucault (2000, 434) argued that “the way in which punishment is meted out has always been one of the most fundamental traits of every society. No important mutation is produced in a society without an alteration taking place in that domain.” Following this cue, we suggest that our focus on the place of capital punishment must shift; our focus must instead be directed toward the valuation of life and death within American society more generally, and the American *capitalist* state more specifically. We argue, ultimately, that a starting point is to reconsider how the deaths of Davis *and* Brewer factored into the broader calculated management (and valuation) of *life* performed within the capitalist labor market.

Our argument unfolds through a series of conceptual arguments. First, we situate capital punishment within the context of biopolitics and state sovereignty. Here, we argue that capital punishment continues to serve, in part, a reification of the state’s sovereign right to violence. In so doing, capital punishment reaffirms the classic separation between the sovereign and the governed. Second, with reference to the figure of *homo sacer* we argue that not only does the state continue to *take life* via capital punishment; society also performs a vital role, namely the *disallowance of life* to the point of death. We support this argument through a reworking of the concept of ‘dead labor’ and, specifically, through our forwarding of a limit figure, the ‘living-dead laborer’.

An initial caveat: It is true that the United States is not unique in its continuance of capital punishment. However, it is also true that more than 70 percent of all countries—139 of them—have abolished the death penalty in law or in practice. Indeed, the United States stands with China, Iran, North Korea, Yemen, and the Sudan in its support of capital punishment (Bohm, 2012, 117-118). Given

⁴ By extension, we believe that it is misplaced to challenge capital punishment on the grounds of cost-benefit analyses; that it is more ‘cost-effective’ to keep prisoners in prison as opposed to executing them. Such an argument maintains the possibility that capital punishment is acceptable if ‘the numbers’ justify execution.

that most Western European states have abolished the death penalty, readers likewise may wonder about our emphasis on capital. To this we suggest that the idea and ideal of ‘American Exceptionalism’ holds true; that when it comes to the valuation of life, the United States is in many respects an exception. This is seen, for example, in the fact that the prison population in the United States is the largest on earth; that the United States has a higher homicide rate than most Western European states; and that households in the United States own more guns than any other state in Western Europe. Such observations underscore an *American* attitude toward violence, including that of both capital accumulation and capital punishment (cf. Chasin, 2004). Moreover, American society is, in certain respects, unique as to how ‘race’ and ‘racism’ are performed; this holds especially for the imbrication of racial processes within both the American criminal justice system and America’s engagement with capital punishment (Hartman 1997, Banner 2002; Bedau and Cassell 2004; see also Tyner and Houston 2000; Mendieta 2004; McKittrick 2006, 2011; Gilmore 2007). It is widely known, for example, that African-Americans are disproportionately represented on death row.⁵ However, the execution of Brewer—a white man found guilty of murdering an African American man, suggests that racial explanations must be tempered to reflect the intersectional of ‘race’ *and* class.

This leads to a second caveat. Although the impetus for this paper is the execution of *both* Davis and Brewer, our purpose is considerably more expansive. Our paper is unabashedly theoretical in scope; it is not our intent to argue, empirically or otherwise, the guilt or innocence of either Davis or Brewer; nor is it our intent to provide an empirical critique against capital punishment.⁶ Rather, it is our goal to spur critical engagement with the valuation of life and death within American society; and to consider the ‘place’ of capital punishment within the context of contemporary American capitalist practice.

Capital Punishment and State Sovereignty

Capital punishment, at one level, is a material practice, one that is carried out via an assortment of bio-technologies: the hangman’s noose, firing squad, guillotine, electric chair, gas chamber, and lethal injection. But on another level capital punishment entails a social relationship, precisely that between the executed and the executioner. However, it is generally agreed that this social relationship signifies yet another, higher abstracted relationship: the populace and the

⁵ As of January 1, 2013, African Americans comprised 42 percent of all death row inmates compared to whites (43 percent), Hispanics (12 percent) and ‘other’ (3 percent). Note also that the proportion of Hispanic death row inmates increased from 9 percent to 13 percent since 2000. See NAACP (2013).

⁶ We are very much sympathetic to an earlier reviewer who questioned the ‘real world’ application of the arguments presented in our paper. While we support the idea of providing an empirically grounded paper to critique the continued practice of capital punishment, this is not that paper. We hope however that the ideas contained herein may serve as a foundation for continued work, both within and beyond Geography, to challenge the continuous of (what we perceive) an immoral practice that does nothing to promote a more peaceful, less violent society.

sovereign. In other words, both the executioner and the executed *embody* and *signify* other relations that constituted, politically, any given society, e.g. guilt/innocence, right/wrong, or inclusion/exclusion.

Spurred in part by the writings of Michel Foucault, Giorgio Agamben, Roberto Esposito, and Nikolas Rose, there has been a resurgence of interest in the concept of biopolitics. Itself an over-burdened term, biopolitics has come to broadly signify those governmental practices associated with the supervision and regulation of the human population (Mbembe 2003, Rose, 2007; Esposito, 2008; Lemke, 2011). Moreover, recent work on biopolitics has forced a re-configuring of myriad other concepts, including sovereignty and the constitution of life and death (Tyner 2012, 2013). Foucault (1990), in particular, argued that in the classic conception of sovereignty, the right of life and death was asymmetric, balanced on the side of death. Thus, while the sovereign exercised his or her right of life and death, in practice this right emphasized the right to take life. Consequently, it was at the moment when the sovereign may kill that he or she would exercise the right over life.

Foucault argues, however, that this right to take life was gradually replaced by a power to foster life or to disallow life to the point of death. This shift coincided with a repositioning of the population and the emergence of *human sciences*, including both medical and penal knowledges. The old power of death that symbolized sovereign power was supplanted by a ‘calculated management of life’ (Foucault, 1990, 140). As Agamben (1998, 142) writes, “sovereign is he [sic] who decides on the value or the nonvalue of life as such.” Consequently, decisions to kill, to foster life, or to disallow life were made within a context of state valuation: matters of life and death became matters of governmental bioethics.

What is less appreciated—and what the deaths of both Davis and Brewer highlight—is that the modern state’s right to ‘foster life’ never completely erased the classical right ‘to kill’. Indeed, the valuation—and act of taking life—is readily seen in the practice of capital punishment. As Sarat and Culbert (2009, 6) explain, “in a regime dedicated to putting and keeping life in order and safe, the state may still exercise the right to death associated with the classic sovereign. To do so, however, it has to describe those who will be put to death as incorrigible monsters or as biological hazards so that their demise and final disposal can be represented as an unpleasant but necessary task that the state reluctantly but decisively undertakes for the well-being of its citizens.” Furthermore, as we elaborate in the sections that follow, ‘society’ becomes complicit in such a task. The state, through its calculated management of life and segmentation of the population facilitates a bifurcation between those citizens deemed ‘responsible’ (and which we will designate as ‘living-dead laborers’) and those deemed ‘incorrigible’ (‘homo sacer’). Accordingly, society itself *augments* the sovereign power of the state to take life or to let die in a disparate fashion.

Capital and the Valuation of Life

How does the ‘state’ determine which lives are not worthy; which lives constitute threats to the well-being of its citizenry? We maintain that, within the capitalist state, such valuations begin from the standpoint of markets—including but not limited to the labor market—for it is within this arena that the calculations of political life (and death) originate. Moreover, it is within this arena that certain bodies are racialized, gendered, and sexed in conformity to the dictates of capital.

We understand that the concepts ‘workers’, ‘laborers’, and ‘persons’ are constantly reworked—reevaluated—in adaptation to changing structural conditions. Significantly, the meanings of these concepts are necessarily reworked along the familiar yet shifting planes of ‘race’, sex, and gender—as well as age, ability, and even weight. Feminist scholars, for example, have contributed significantly to the understanding of these processes and have highlighted how women are relegated to selected tasks, including the provision of food, care of the home, childcare, nursing the sick, teaching, and the manufacture of clothing (Mies, 1998). Feminists have argued that while women (as a generic category) operated within gender-restricted labor-markets, racism and discrimination ensure that the position of ‘women of color’ is even more restricted. Because of the heterogeneous demands of capital, a diverse labor force is required and thus employers may exploit these social divisions. Critical race scholars, likewise, have articulated the machinations of ‘race’ in both formal and informal labor markets. Consequently, at any given moment, and at any given location, particular bodies are inserted into the production system to satisfy perceived needs and requirements. To this end, gender, ‘race’, and age have historically signified what a certain kind of laborer is capable of doing or permitted to do (Harvey, 2000).

Given that these social attributes figure prominently in the exchange of variable capital (labor power) it is important to consider more concretely how they are implicated in the embodiment of workers. Jamie Peck (1996, 34), for example, writes that the process of assessing a person for a job goes beyond whether they are capable of operating the technology in a required way, but also involves consideration of inherently unpredictable factors such as reliability, creativity, sociality, adaptability, and deference to authority. He explains further that these ‘traits’ follow from the fact that labor is not a commodity, but rather a set of capacities borne by people. Nevertheless, these traits *are* inscribed on particular bodies. Harvey (2000, 106) concurs, noting that “insofar as gender, race, and ethnicity are all understood as social constructions rather than essentialist categories, so the effect of their insertion into the circulation of variable capital ... has to be seen as a power force *reconstructing them in distinctively capitalist ways*” (emphasis added). Indeed, both life and death are increasingly understood in distinctively capitalist ways.

Critics of capitalism, from Marx to Polanyi to Marshall have long understood that labor is a fictive commodity. However, as Peck (1996, 3)

identifies, “if the reading of the labor market as a commodity market is a fiction, it is a powerful fiction.” Peck (p. 3) explains that such an unfettered faith in the market gives rise to the presumption that “the market gives people what they deserve.” In other words, those who fail—the impoverished, the homeless, the destitute—do so because of their own decisions; “failure follows from the individual inadequacies of the workers” (Peck 1996, 3). These presumptions have only deepened within the neoliberal state. Indeed, as Nadesan concludes, neoliberal promoters hold that the “market’s role in producing inequality is an unfortunate, unforeseen, and unintended consequence” but nevertheless is a condition “that should not be redressed through government intervention” (Nadesan, 2008, 32).

Here, we suggest that the determination of worth—the decision to make life or to disallow life to the point of death—within the contemporary neoliberal state is predicated on two overlapping criteria found within the capitalist labor market: productivity and responsibility. Capital *values* those racialized and gendered bodies deemed both *productive* (e.g., in a position to generate wealth) and *responsible*, with responsibility conceived simultaneously as the ability to participate fully as producers, reproducers, and consumers in the capitalist system and to not incur a net loss to the system. Thus, as Majia Nadesan (2008, 34) concludes, “individuals who fail to take ‘responsibility’ for their self-government, or whose modes of comportment violate normative or modality-specific standards, are subject to various forms of guidance and discipline exercised by various ‘expert’ authorities.” Increasingly, they are being disallowed life to the point of death.

Those individuals, who are determined, based on an economic bio-arithmetic, to be non-productive—the elderly, the disabled, the poor and homeless, among others—are increasingly being disallowed life to the point of death. So too are those deemed irresponsible: unwed mothers, the unemployed, prisoners; these bodies are also increasingly considered to be undeserving of social and financial assistance and are thus disallowed life. In other words, what we are witnessing is the increased ‘letting die’ of an entire class of people: the *lumpenproletariat*. We witness this act of ‘letting die’ in the repeated attempts to eliminate various governmental safety nets: welfare, health care, social security. Both the services provided, as well as actual monies, are being eliminated on the grounds that either these lives are not productive and thus not worthy of assistance; or that these lives constitute a net loss to society and hence threaten the ability of the ‘state’ to accumulate wealth. In the process, we are witnessing a transformation in how life and death are valued.

Much as the inner-workings of the labor market, the valuation of life and death is made in the context of racism, sexism, ableism, ageism, and so forth. Indeed, we might argue that the inner workings of the labor market are *always and already* predicated on the valuation of life understood through such social integuments as ‘race’, sex, gender, sexual orientation, and (dis)ability. Those who fail in society—the so-called unemployed ‘dead-beat dad’, the ‘irresponsible’ single parent, the ‘Black welfare queen’, the ‘habitual criminal’—have failed

because of their own moral deficiencies. They are framed as lacking in those qualities deemed necessary to *survive* in society; but because their failings are perceived to be the result of their own negligence and carelessness, they are not worthy of our assistance or even (increasingly) of our sympathy.

The Disallowal of Life

Both Troy Davis and Lawrence Brewer had their lives *taken* by the state. And yet, both men also were *disallowed life* by an American society that continues to condone capital punishment. Here we consider more closely the implications of this latter statement. To begin, both Davis and Brewer were found guilty of taking another person's life; their crimes were found to be morally wrong and thus subject to the sovereign's right to exact retributive justice in the form of capital punishment.

That the state is *permitted* to take life is, in part,⁷ because the state occupies a space of exception. The sovereign exception is readily understood when one considers that the sovereign, such as a king or president (or 'government', more broadly), is not subject to the same laws and regulations as are other citizens (Murray, 2010, 60). However, within the space of exception, other people may be abandoned; other people may be excluded through only their inclusion, and included only through their exclusion. And it is the abandoned, the marginalized—the aforementioned 'welfare queens' and 'habitual criminals'—who are reduced to 'bare life'. It is the abandoned, the lumpenproletariat, who become *homo sacer*.

Homo sacer, according to classical Roman law, constitutes 'bare life', a threshold position between *zoē* and *bios*. The former term designated "the simple fact of living common to all living things" (Agamben, 1998, 1) whereas *bios* represented a collective and qualified life; it is that which emerges when life enters the polis, or political space. One who was reduced to bare life, however, occupied a liminal position, similar in this respect to that of the sovereign. Bare life remains included in politics in the form of the exception, that is, as something that is included solely through an exclusion (Agamben, 1998, 11). For *homo sacer*, however, the operative principle was that he or she could be killed with impunity, one whose death constituted neither homicide nor sacrifice. Returning to our understanding of sovereignty, what is conceived within the sovereign ban is a human who may be killed but not sacrificed (Agamben, 1998, 83). *Homo sacer* inhabits a political space that is simultaneously placed outside of human jurisdiction without being brought into the realm of divine law.

Agamben (1998, 114) holds that "what confronts us today is a life that as such is exposed to a violence without precedent precisely in the most profane and banal ways." Moreover, he suggests that "when the state of exception ... becomes the rule, then the juridico-political system transforms itself into a killing machine"

(1998, 86). This need not be as blatant as the industrial slaughter that typified the Nazi state. Rather, it may be exceptionally banal, as in the routinization of life unworthy of life, for example, as found in contemporary discussions of health-care in the United States. The space of exception, which was essentially a temporary suspension of the juridico-political order, now becomes a new and stable spatial arrangement inhabited by the bare life that more and more can no longer be inscribed in that order (1998, 175).

In a well-worn quote, Agamben suggests that “If today there is no longer any one clear figure of the sacred man, it is perhaps because we are all virtually *homines sacri*.” Agamben’s statement is at risk of becoming overburdened by academics. Simply put, we are *not* all virtually *homines sacri*; nor are we exposed to the same risk. The violence that permeates—indeed, constitutes—our contemporary state of exception is unevenly experienced, for the calculated valuation and management of life and death derived, in larger part, from the workings of the labor market, ensures that survival operates on an uneven playing field, with ‘non-whites’ and women all too frequently at greater risk. As Inwood and Bonds (2013) articulate, capital accumulation derived through exploitation has produced extremely racialized and gendered economic geographies. What is most crucial for our present argument is that an ever-increasing number of racialized, gendered, and *classed* people are in fact being abandoned and it is this abandonment that needs addressing.

Within the twenty first-century, bare life is given form through the production of structural violence in that an ever-increasing number of lives are being abandoned through political, economic, and social decisions. In essence, more and more people are being disallowed life to the point of death; and their deaths not only carry no meaning, they are *morally and legally permitted*.

We argue that the ‘state’ did not transform Davis and Brewer into *homini sacer*, in that—for the state—the deaths of these two men carried an important legal function; their deaths reified the state’s monopoly of violence. For the state, these two men were found guilty and thus justice required the taking of their lives. Rather, it is our thesis that it is through the machinations of capitalism that citizens in large part determine who may or may not become *homini sacer*. Specifically, we contend that capitalism, in its modern, neoliberal form, facilitates the *letting die*—the disallowal of life—within a Darwinistic labor-market environment whereby the privileged few in society—typically wealthy, ‘white’ men—prosper while others, subjected to systemic structural inequalities and unequal legal systems, are left to perish. Crucial to our thesis is the distinction between ‘taking life’, which is monopolized by the ‘state’, and ‘letting die’, which, we suggest, derives from capital’s indifference (see Tyner, forthcoming).

Philosophers have long considered the ethical distinction between killing and letting die (Rachels, 1979; Young, 1979; Green, 1980; Steinbock and Norcross, 1994). Intuitively, it is presumed that the act of killing is morally worse than letting

die. Such a presumption hinges on our understanding of agency: to kill is an action whereas letting die is an omission, or lack of action. Furthermore, this moral division is founded upon a distinction between ‘negative’ and ‘positive’ duties. On the one hand, we have duties not to harm others, which require restraint; these are termed negative duties. We also have, on the other hand, positive duties whereupon we have duties (some might say, obligations) to help others. In practice—but also in law—negative duties to not harm often outweigh positive duties (Davis, 1994; Lichtenberg, 1994). Thus, infringements on the duty to *not* kill are considered graver than infringements of the latter. From this perspective, state practices that *intentionally* injure or kill—with the *exception*—of both capital punishment and declarations of ‘just’ war—are significantly more serious than the state’s failure to enact positive practices that aid its citizens. And indeed, it is this distinction that designates extrajudicial murder or war-rape as ‘crimes against humanity’ while the lack of providing adequate health care is not considered to be a crime. In the former situation, the state may be found guilty through its perpetration of specific practices that kill people; in the latter situation, however, the lack of action is considered to be neither morally nor legally wrong.

We suggest, first, that ‘letting die’ should be considered on an equal moral footing with killing and, second, that social relations embodied by the capitalist labor market *ensure* that some people—those reduced to bare life—will be disallowed life through a process of ‘letting die’. First, the act of ‘letting die’ does not imply not doing something to prevent death (Green, 1980, 196). Rather, to ‘let die’ is to fail to act—it is intentional, it is to refrain from acting otherwise. This argument rests on three conditions: ability, opportunity, and awareness. I will briefly discuss these conditions, beginning first with *ability*. According to Green (1980, 196), to refrain from performing an action involves not performing that action *but having the ability to perform it*. Stated in the form of a question: Is an individual in a position to prevent a death but, through his act or inaction, fails to do so? Second, we have the condition of opportunity. Is it logically possible that a person has the opportunity to prevent death? To take an obvious geographic example: a doctor living in New York may have the ability—the skills—to perform a life-saving operation, but not the opportunity to save a person suffering from an illness in Los Angeles. Third, we may consider awareness. Is one aware of the conditions that contribute to the disallowing of life to the point of death? If one has the ability, the opportunity, and awareness of conditions that will ‘let die’; and one still chooses to refrain; than that person has reduced the other to a status of *bare life*. Consequently, it is through our own actions or inactions, our own decisions to intervene or not, that we become the sovereign. From a moral standpoint that letting die is less wrong than killing, we ourselves are positioned outside of the law. And it is society that increasingly *defines those who will be reduced to the status of homo sacer*.

At this point, we draw on Agamben’s forwarding of the idea of ‘impotentiality’. According to Agamben (2011, 43) there is an insidious operation

of power that does not immediately affect what humans can do—their potentiality—but rather their ‘impotentiality,’ that is, what they can not do. Agamben (2011, 44) explains that “human beings are the living beings that, existing in the mode of potentiality, are capable just as much of one thing as its opposite, to do just as to not do.” Furthermore, it “is not only the measure of what someone can do, but also and primarily the capacity of maintaining oneself in relation to one’s own possibility to not do, that defines the status of one’s action” (Agamben, 2011, 44). In other words, impotentiality is a variation on the idea of ‘letting die’. Just as we have the capacity to act, we also have the capacity to not act. This latter *active inaction* is predicated upon our calculated management of life: do we, or do we (choose) not to act? Do we condone the state’s taking of life via capital punishment or do we not? Do we acquiesce to the state’s non-provision of adequate welfare and healthcare or do we not? In raising these moral decisions, we now turn to our second line of reasoning, namely that the social relations embodied by the capitalist labor market ensure that some people (i.e., those reduced to bare life) will be disallowed life while, in turn, others will ‘let die’ these people. We develop this argument in the following section, through a ‘dialectics of dead labor’.

Dead Labor and Living-Dead Labor

Karl Marx, in his critique of capitalism, equated commodities with ‘dead labor’. More precisely, Marx conceived of ‘dead labor’ as past labor power—the expended energy—that is embodied within a *thing*, whether that thing is a linen coat or a bushel of corn (Marx, 1990, 289). For Marx, the *term* ‘dead labor’ was used metaphorically; Marx did not consider the actual *death* of laborers. However, in a series of articles, Don Mitchell (2000, 2003, 2007; see also Kirsch and Mitchell, 2004) reworks Marx’s conception of ‘dead labor’ and asks geographers to consider the concept in less-than-metaphorical terms. Here, we extend Mitchell’s line of thought through a juxtaposition of *Homo Sacer* and what we term the ‘living-dead laborer’.

In a provocative chapter addressing the political economy of California’s agricultural landscape, Mitchell (2007) asks us to consider more than just the shape and smell, texture and taste of the strawberry. For the surface appearance of the strawberry, Mitchell (2007, 235) writes, “says nothing of the labor that makes it; it merely appears as just what it is, a complex biogenetic entity—a berry.” However, as a commodity, the strawberry *embodies* the social relations of its own production. These include, for example, but are not limited to, the labor involved in cultivating the agricultural fields; the planting and harvesting of the crops; and the distribution of the berries. In short, commodities—such as the strawberry—‘stabilize’ social relations; they are “‘dead labor’, work ossified and made concrete” (Kirsch and Mitchell, 2007, 696).

When considering the dialectics of dead labor, however, it is important to remember that ‘dead labor’ itself is a social relation; and that all relations contain

their own inner contradictions. One of the contradictions inherent within dead labor is within the realm of both ‘living’ and ‘non-living’ bodies. Indeed, as Mitchell’s work so clearly demonstrates, the labor that is embodied by commodities—the living laborer that reanimates dead labor—is frequently injured or killed in the labor process. In other words, living laborers, through the transformation of dead labor, may become (quite literally) dead laborers. However, to counter this unexpected binary between ‘living’ and ‘non-living’ laboring bodies, we introduce a limit figure: the living-dead laborer. That is, those people—most especially the proletariat—who are literally alive (living) but, through their social (re)production in the labor market, are rendered metaphorically dead through vapid inaction. Of significance, therefore, is the recognition that not are these ‘productive’ laborers *alienated* from their products; they may also become alienated—indifferent—to those other living bodies—deemed ‘unproductive’ or irresponsible’—around them. Such indifference to other, alienated bodies facilitates the attitude and acceptability of ‘letting die’ or ‘taking life’.

Conceptually, the living-dead laborer is a close relative of Foucault’s ‘docile body’. As Foucault (1979, 25-26) explains, the docile (laboring) body “is bound up, in accordance with complex reciprocal relations, with its economic use; it is largely as a force of production that the body is invested with relations of power and domination; but, on the other hand, its constitution as labor power is possible only if it is caught up in a system of subjection...; the body becomes a useful force [for capitalism] only if it is both a productive body and a subjected body.” Furthermore, as Foucault (1979, 138) elaborates, “Discipline increases the forces of the body (in economic terms of utility) and diminishes these same forces (in political terms of obedience)”; hence, discipline “dissociates power from the body; on the one hand, it turns it into an ‘aptitude,’ a ‘capacity’ which it seeks to increase; on the other hand, it *reverses the course of the energy*, the power that might result from it, and turns it into a *relation of strict subjection*” (emphasis added). This reversal, we maintain, reveals a further contradiction of the capitalist wage-laborer, namely that the laborer embodies both the *capacity* to work and the *incapacity* (the impotentiality) to act. It is this limit figure, this figure who embodies both capacity and incapacity, who we designate as living-dead labor.

At this point, we may be accused of straying rather far from the topic at hand, namely that of capital punishment. In the final section, we bring our arguments to bear.

The Death of Homo Sacer

Capital punishment has long been a feature of American society; moreover, capital punishment, by-and-large, has been consistently supported by the vast majority of American citizens (Banner 2002; Bedau and Cassell 2004; Bohm 2012). As previous research documents, numerous explanations have been forwarded to account for the continued use—and acceptance—of capital punishment in the United States. Such explanations include a penchant for

retributive justice; financial concerns related to the ‘warehousing’ of convicted felons; and a belief in the deterrence-effect of execution (Bohm, 2012). We forward an alternative thesis, one that is predicated on the contradictions of the capitalist labor market and, specifically, the capitalist-induced conflict between the proletariat (living-dead labor) and the lumpenproletariat (bare life).

Like Don Mitchell’s strawberry, the figure of *Homo Sacer* does not simply appear; rather, it must be *produced*. And as a product, *Homo Sacer* may be understood as embodying and signifying those social relations that bring about its existence and, we will argue, its *potential* execution. However, unlike the classical account of bare life, we find that ‘society’ and not simply the ‘state’ may bring about its own space of exception. This is seen, as discussed in earlier, in the dialectics of dead labor, whereby the disciplining of the labor market not only facilitates the reanimation of ‘dead labor’ by ‘living labor’; it also provides the space of the ‘living-dead’ laborer.

The capitalist labor market is populated not simply by laborers, but instead by producers, commodities, and consumers. And it is through the inner (contradictory) workings of the labor market that particular bodies are either included or excluded through a calculated management of worth. Recall that capital *values* those bodies deemed both *productive* (e.g., in a position to generate wealth) and *responsible*, with responsibility conceived simultaneously as the ability to participate fully as producers and consumers in the capitalist system and to not incur a net loss to the system. This leads us to question: Why does the living-dead laborer exhibit an in-capacity to act vis-à-vis those people who have been reduced to bare life? Consequently, our understanding of capital punishment rotates around not the legal relation between the sovereign and society, but rather the social relation between those who are reduced to and embody the exception (bare life) and those (the living-dead laborer) who through their inaction enable the disallowal of life. We have, in fact, resituated the debates over capital punishment within the long-standing conflict between the proletariat and the lumpenproletariat. Marx, of course, was no friend of the lumpenproletariat—the criminals, vagabonds, and prostitutes. For Marx, these ‘parasites’ constitute a dangerous element and thus require separation from the morally upstanding proletariat (cf. Denning, 2010).

Contra Marx, we seek to reclaim the vitality of the lumpenproletariat in order to highlight the indifference toward life that is promoted by capitalism. First, consider the *living-dead* laborer. These impotentiated bodies are produced, and disciplined, through the circulation of capital. As simultaneously producers and consumers, they represent the living-dead. It was Marx (1990, 342) who argued that “capital is dead labor that, vampire-like, only lives by sucking living labor, and lives the more, the more labor it sucks.” In turn, we suggest that the living-dead laborer survives, zombie-like, through his or her indifference to those *other bodies* reduced to bare life. For the living-dead laborer, survival is threatened by those who are *even more* exploited, by those who ‘have nothing’ and therefore ‘have nothing to lose’ through (immoral) criminal activity. Capital (and hence,

exploitation) is therefore not viewed as the problem for those denied the means of production; rather, it is the parasitic layer of society—the surplus population—that constitutes a social, political, and economic threat to the ‘morally superior’ working-class.

It is the calculation and valuation of ‘difference’ in and by society that is all-too-often ‘indifferent’ to oppression and exploitation that allows for the extraction of surplus value from differentiated racialized and gendered laboring bodies, namely those rendered as living-dead or as bare life. Both are made to work and die—literally and figuratively—for the perpetuation of the status quo, for the mantra of accumulation for accumulation’s sake. And as their position in life is unequally constructed, so too in death do they remain unequal.

Those persons relegated to being living-dead laborers exist as docile, productive (yet responsible) workers, indifferent to the plight of others less fortunate—the lumpenproletariat. And this latter class of people, those who have been reduced to bare life, may be (and increasingly are) arrested; many spend lengthy stints on ‘death row’ awaiting their final judgment by *both* the sovereign (i.e., the state) and society (i.e., the living-dead labor). Both Davis and Brewer became bare life; they were required to be removed, actively, from society. Their lives were taken; their deaths occasioned, by a revanchist state (and a vengeful majority populace of living-dead laborers) that reasserted its classic right to kill. For Brewer, his execution signified most clearly the state’s monopoly of violence, for only the state may kill with impunity. For Davis, however, we receive a different racialized message, one that transcends guilt or innocence. If he *was* guilty, so be it; but if he *was not* guilty, he becomes collateral damage—the exception that supports the rule. In the end, we argue, the execution of Davis highlights that guilt or innocence is not the issue; that the *majority* of Americans support capital punishment because they believe in the vengeful taking of life of those who have transgressed—or simply appear to have transgressed.⁸

The ambiguity surrounding Davis’ guilt or innocence reinforces that state’s conduct of conduct. As citizens, according to the neoliberal ideal, we are to be *responsible* citizens; we are to conduct ourselves properly; we are not to place ourselves in positions of vulnerability. Davis’ crime, and the occasion for his death, was not his alleged killing of a police-officer; rather, his crime was in being arrested. The execution of Davis will not—despite claims of some supporters of capital punishment—deter future murders; the execution will, however, continue to serve a political function. But his execution, likewise, was occasioned by the *active inaction* of a class of living-dead labor that has been rendered apolitical and indifferent to the plight of the less fortunate.

⁸ As the long brutal history of the United States reveals, perceived transgressions are decidedly (and unequally) racialized, with African American (men) especially targeted—and executed—for so-called transgressions. That said, the poor and destitute—regardless of ‘race’, gender, or even sexual orientation—have been targeted for punishment and death. It is this confluence that determines the valuation of life in American society.

This, of course, is the point made so dramatically by Franz Kafka. In the novel *The Trial*, Josef K. wakes one morning to find him being arrested—without having done anything wrong. Throughout the story, Josef K. never does stand trial; and yet, in the end, he realizes that guilt and innocence were irrelevant; that what mattered was that he was arrested, and for that, he was to take responsibility—literally—for his own punishment. Indeed, in the final scene, Josef K. was expected to execute himself; and, ironically, this was to be his final failure in society. Kafka (1998 [1925], 230) writes: “He [Joseph K.] could not rise entirely to the occasion, he could not relieve the authorities of all their work; the responsibility for this final failure lay with whoever had denied him the remnant of strength necessary to do so.” On September 21, 2011, Troy Davis was unable (and, we might add, unwilling) to kill himself. The state was forced to intervene in taking Davis’ life. But society also played a role.

It is through the juxtaposition of both bare life and living-dead labor that we may begin to understand the legacy for America’s support of capital punishment. For we conclude that those who are ultimately executed are those perceived to transgress the market-dictates of American society; and it is through society’s zombie-like indifference to the plight of the abandoned that capital punishment continues as a disciplinary practice. The object of discipline, though, is not crime; rather, it is capital accumulation.

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