Why Feminists Should Oppose Capital Punishment

by Silvia Federici

Upon the gallows hung a wretch
Too sullied for the hell to which
the law entitled him.
As nature's curtain fell
the one who bore him tottered in
For this was woman's son
"'twas all I had" she stricken gasped.
Oh, what a livid boon.
(Emily Dickinson)

I never felt such pain as I did
the night that my son...died. I didn't
think I would live through it, and I am
not sure that I wanted to....I sincerely
hope that no other mother will have
to go through that kind of pain again...
(Mother of Executed Prisoner).[1]

There are few contemporary issues that feminists have not addressed. Poverty, racial discrimination, environmental destruction, war (to name a few), all have been given space in feminist literature. By contrast, any review of the same literature would fail to produce even one article on capital

punishment. For instance, a recent Special Issue of Hypathia (an important feminist philosophy journal) on "Women and Violence" (Vol. 11, No 4, Fall 1996) devoted several essays to the question of war. But it offered only one passing reference to the death penalty. This occurred in an article by Claudia Card, where the author, in a non-committal fashion, envisions the possibility of establishing capital punishment as a penalty for martial rape, to then reach the conclusion (whose reasons and implications unfortunately she does not examine), that women would not be likely to support such move:

The penalty instituted by men for martial rape has often been death, a penalty almost never carried out where there has been no murder unless there is a racist reason, and then the rape charge may be purely inflammatory. Instituting death for rape is a sure way to guarantee that the penalty will not be inflicted unless there is another reason (such as racism). I doubt that women would be more willing than men to apply the death penalty (Card 1996: p. 14)

Why feminists have been so silent on the question of capital punishment is not an issue I want to address in this essay. My purpose here is to simply break this silence. Specifically, my objective is to argue that there are many reasons why feminists should oppose capital punishment. Some stem from the value system implicit in the practice of feminism. I refer to the commitment that feminists should share to enhance the value of human life, to refuse to make of other people's pain the source of their satisfaction, and to acknowledge the reciprocity of self and other, that turns any inflicted injury and humiliation into a self-inflicted wound. I also refer to the function of feminist politics as an activity whose task is to call into question all forms of domination, and that must, therefore, denounce the system of ontological apartheid that the death penalty institutes. By "ontological apartheid" I refer to the fact that capital punishment postulates the existence of two, almost ontologically different humanities: on the one side the "rational" citizens," for whose benefit executions are allegedly carried on, on the other, the beastly criminals, to whom anything can be done, since by their actions--we are told--they

have placed themselves outside the boundaries of our humanity.

There are other reasons, however, why feminists should to speak in support of a society free from hangings, electric chairs and lethal injections.

First is the fact that feminism aims to articulate a new system of values, crafted out of the historical experience of women, and committed to challenge the devaluation of life that has characterized our patriarchal tradition. Thus, feminism must necessarily oppose capital punishment, since, like war, it is the ultimate state ritual by which life, and life-affirming activities are being devalorized and patriarchal values are perpetuated. Never, in fact, could capital punishment be deemed acceptable, even from a crude retributionist viewpoint, if the reproductive activities involved in the process of child-raising, and the bonds between children and parents generated by them, were given any consideration. For in this case, the Criminal Justice System would not be allowed to ignore that there are women who have given birth and raised those who, today, are being condemned to death; and that every time a man or a woman die on death row their mother dies with them. She too is destroyed when her child is executed, if it is true that her child represents her own life, her body, her work. Yet, the devastating consequences of capital punishment for the mothers of the condemned have been rendered invisible. Their pain is never spoken about in the courtrooms, or in the media, even though it must exceed any imaginable torture, as they must not only agonize over the impeding death of their children, but must internalize their terror, day after day, sometimes for years, then "live" through the execution, and bear for the rest of their lives the horror of this experience. [2]

Fathers, spouses, and other significant relatives of those the state condemns to die share the same ordeal, which includes being exposed to a pitiless social ostracism from which even the children of the executed are not spared.[3] Thus, examining the implications of capital punishment from the viewpoint of the "mother" is not to suggest an odious comparison between

these different forms suffering. Rather, it is to stress the devaluation of mothering, as reproductive work, life-sustaining activity, that is implicit in capital punishment.

It is important to add that this killing in cold blood, perpetrated against a person who is no longer in the position to harm anyone, not only erases years of a woman's work, spent in caring for her child. It also confers to the State that same patria potestas that, in Roman law, entitled the father to be the ultimate owner of his children's lives, and the one, therefore, who had the right to inflict death upon them.[4] In this way, capital punishment stands as the utmost embodiment of patriarchal rule, despite the fact that, since John Locke's famous reply to Filmer in his First Treatise on Civil Government, the argument for state patriarchalism has been rejected (Locke 1963). To use a language rendered popular by French Lacanian feminists like Luce Irigaray (1974), we could say that, quite literally, capital punishment is the state ritual that most openly celebrates "the law of the father." We could say it is the negation of "mother right," if it possible to use this concept in a way that does not make any concession to a biologistic viewpoint, nor suggest a desire to replace an oppressive patriarchalism with an equally oppressive matriarchalism, but simply demands that the gift of life, realized by every birth, and the painstaking work of reproduction that raising a child entails, be protected.[5]

A further reason why feminists have a special responsibility to speak against capital punishment is the fact that we are in the best position to unmask the hypocrisy of the state in its role as executioner. As women, we know all too well, since we have always been the victims of it, the responsibility that the State bears in the propagation of male violence. We know that men are violent not because of any biological predisposition, but rather because violence is inculcated in them, and is honored and praised as a sign of genuine masculinity, in the case of war it is even rewarded with medals and exalted as the path to glory. In fact, the same state that kills those who commit murder, teaches and glorifies violence in his military academies, even though it is well-known that innocent

civilians represent the bulk of the victims in modern wars (Ehrenreich 1997: p. 227).

In this context, the existence of capital punishment, beside being an abomination, represents for women the greatest danger. For in upholding executions, the state deceives us into an illusory sense of safety, while it marks us once again as victims. We can agree, in fact, with J.J. Rousseau that a well-governed state has no need for punishments, "not because many pardons are given, but because there are few criminals" (Social Contract : 65). Thus, harsh penalties always betray a pernicious intent; they are a sign of a commitment to malgovernment, since by eliminating the criminal the state proclaims its supreme disinterest for any such measures that could effectively address the sources and the conditions of crime, notwithstanding its paternalistic pretense to be our protector.

The ideological orchestration that has accompanied the reinstatement of capital punishment in the U.S. since 1976 is exemplary in this respect. In it, no social responsibility is acknowledged for the existence of violent crime. The ever deepening social inequalities, the impoverishment, and virtual disenfranchisement of vast sectors of our population, the creation of a carceral system that now claims the lives of almost two million people in jail and another three and a half in forms of penal servitude on parole and probation, the growing militarization of every aspect of our society-- to name some of these factors that now shape the everyday reality for millions of people in the United States-- are all ruled out as possible sources of abusive, murderous behavior. Only human perversity is made responsible for it, hence the call for more executions and, with it, the legitimation and perpetuation of the very policies that create the conditions for violent crime.

This implies, that while more and more executions are being carried out in our prisons in the name of public safety, we, the public to be protected, can only look forward to an escalating cycle of violence, that undoubtedly will affect women above of all. For if violence against women is not to be measured

only by the number of murders of which we are the victims, but is to include the millions of yearly recorded acts of physical and psychological abuse perpetrated against us, then we must conclude that women are still the designated targets of male aggression, and we are, therefore, those who most must fear when human sacrifices are offered as substitutes for social reforms. It is on women, in fact, that men still vent their frustration in time of economic stress, when their failure to match the image of the provider intensifies the misogyny so pervasive in our society.

We must also be concerned with the fact that today the main justifications offered for capital punishment seem to be voiced from a more "feminine" viewpoint. As George Caffentzis has shown, the leading argument in support of capital punishment is presently one that no longer speaks from "reason" (as in the case of the more traditional defenses, that were argued in the name of deterrence), but makes an appeal to "feelings". It is an argument that pretends that capital punishment is administered in order to make "us", the actual or potential victims, "feel good"; to give "us" a sense of "closure", to enable us to "go on with our lives" (Caffentzis, 1997), to the point that some states go so far as building special viewing boxes, in the place of the executions, to give the families of the victims a better, more satisfying view of the torments involved in the procedure.

As "feelings", "emotions" have traditionally been associated with the female side of experience (Jaggar, 1989: 129).[6] the image conveyed is that of a kinder and gentler state, ironically, at odds with its role as executioner. Yet, this appearance is most deceptive.

We can notice, from a purely empirical viewpoint that, if the state were genuinely concerned with our "feelings", we would not daily witness the adoption of policies (such as the elimination of Aid to Dependent Children), that are a virtual death sentence for many women and their siblings. Further, the argument from feelings must assume that the feelings of the families of the condemned are irrelevant, or worse, that the

families too are responsible and must be punished, for otherwise its logic would prove to be totally contradictory.

We also know--thanks to a long intellectual tradition spanning from Spinoza to the existentialists-- that "feelings" cannot be separated from "reason," and far from necessarily representing a turn towards a firmer, or more authentic ground for knowledge, an appeal to feelings may be the last device, the last retreat of reason when is unable to defend itself. In the case of recent defenses of capital punishment, the appeal to feelings may serve as a substitute for evidence proving that the death penalty has a deterrent effect, or a screen hiding the contradiction involved in the pretense that we learn not to kill from the spectacle of state-managed executions.

Still the most pernicious distortion involved in the argument from "feelings" is the degraded concept of the person offered by it, in its assumption that any positive development can result from our witnessing the suffering of another human being. In no way this distortion is more evident than if we look at the execution from the double viewpoint of the mother of the victim and the mother of the condemned. In the logic of the state, these two women have nothing in common, in fact that they can only be enemies, each being somewhat implicated in the other's child' murder. Again, in the logic of the state, who stands between them like a modern (but less wise) King Solomon, there is nothing these women can say to each other, nothing that can bond them except a life-long hatred. However, if the concept of "feminism" has any meaning, then we must assume that alternative scenarios are possible; and indeed there are today, in the United States, organizations of families of the victims who strongly oppose capital punishment, and among them are women, who can make statements like the following :

When a person is dead you are no longer punishing them. You're only punishing the people who love the person you are sentencing to die. That being the case, why would I want any mother go through what was hurting me so much? [7]

What this statement asks us not to forget--and this is where, I believe, feminists have a special contribution to make to the abolitionist stand--is that these men and women, whom the state wants to put to death, are the children of women like us, so that in more than one way we are responsible for them, the more so, since the death and the pain inflicted on them is inflicted in our name. This means that on the question of capital punishment we cannot be silent.

Endnotes

1. "Sarah Easley, Mother of Executed Prisoner." In (Dicks 1991:p. 53).

2. See on this point the collection of articles presented in Congregation of the Condemned, that include many testimonies by families of death row inmates as well as families of victims (Dicks 1991).

3. See (Dicks 1991: pp. 57-58) where the mother of Jimmy Wingo, executed in the Louisiana death chamber on July 15, 1987, for a crime he most likely did not commit, describes the persecution to which his children subjected by their schoolmates; demonstrating how executions inflict a long term torture on the families of the condemned, particularly destructive for the younger generations.

My grand children are still suffering from all of this. I worry about them...I've heard how they are being tormented by the other children in school. They yell out "your daddy was burned. They burned him up". My grandkids just cry....The oldest boy is fifteen, and hates the system so much for killing his father....He wants to beat these kids who say cruel words to him... Some of the kids even call him "killer Wingo."

4. "Legally the most important domestic unit at Rome was the family under the control of its male head, the paterfamilias.

The paterfamilias had potestas, "power", over his direct descendants born in a full Roman marriage and over grandchildren and descendants born in a full Roman marriage to his male descendants. ...Patria potestas lasted until the father's death..." (Watson 1987: 37).

5. I am referring here to concept of "mother right" as used by J.J. Bachoefen in the homonymous book (1861), and developed by Frederick Engels, who ties the end of "mother right" to the rise of private property and the state, and sees in it the historical defeat of the female sex (Engels 1972).

6. For the purpose of this discussion, I use the concept of "feeling" in the everyday usage, that assimilates it to "emotions," although --as Jaggar points out--in the philosophical discourse the two are distinguished.

7. The woman speaking is Camille Bell, whose child was the fourth child killed in the Atlanta Child Murders, in 1967. See. Dicks ed., Congregation of the Condemned, 1991. pp. 135-136.

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