The Death of One's Own:
The Sovereignty at its Limit

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The Two Coinciding Deaths

On February 27th 2009, a young Tibetan monk lit up his gasoline-soaked robes and held up a Tibetan flag within the flames in the marketplace of Ngawa Town. His religious name was Lobsang Tashi, but was better known as Tapey, and he was believed to be the first among 135 Tibetan self-immolators in China that were recorded until now. Whether found alive or dead at the scene, these self-immolators all ended up in very similar circumstances, that is the Chinese officials and police intervened and took their persons or bodies into custody, the whereabouts of many are still unknown. Although not so different from the rest in nature, and perhaps for this reason capable of standing out as an 'exemplar', the case of Tapey will be used as a paradigmatic case for the purposes of this paper. What is remarkable in this case, is that the police fired several shots and took the monk down when his body was already on fire. It was as if the death of the monk was prohibited by means of another death, or as if the two deaths were caught in a contest.

The scene perfectly demonstrates, in its concreteness, some fundamental aspects of the relation between life/death and sovereign power, a topic which this article is trying to rethink and question once again, but from a different point of view. To begin with, what is the importance of the subject's life and death to sovereign power? Clearly, as this case shows, it is not death itself that matters to the state, nor does life. If they did matter, the state would just comfortably accept the suicidal death of the one it wishes to exclude, or on the other hand try to save him and keep him alive for its own interest. But then this assumption that seems obvious at first sight begins to turn awry. If it is not the living or dying of the subject that the state is concerned with, why did it response with such a violent reaction at that very instant? As we start to consider it more closely, it becomes more paradoxical to us to the extend that the two deaths seem to coincide and unfold a single moment, in which what is at the core of the sovereign power turns out to be just what is not.

Secondly, assume that the police took action because there was something at stake in the situation. What can we say about the nature of this action and its relation to the situation it deals with? Does it mean that the life of the subject and sovereign power are antagonistic to one another or interdepending? It is believed that the power of

death is able to rule because no one prefers to die. Problem emerges when a person autonomously seeks death, which renders the punishment of death in an awkward position. Indeed, this punishment without meaning only expose its existence as superfluous when it can no longer function as a means to close up the structure of sovereign power, when it fails to restore what has been previously infringed upon. What then can we know about the nature of sovereignty from this situation? What can we learn about sovereignty when what it fails to do is precisely what it constitutes itself by being capable of doing?

This is perhaps a perfect point to review once again, from a different perspective, the well-known formula that Foucault proposes in *The History of Sexuality*—"One might say that the ancient right to *take* life or *let* live was replaced by a power to *foster* life or *disallow* it to the point of death." (Foucault 1978, 138) —and note that in this sentence quoted it is not 'life' nor 'death' but the verbs before them that are emphasized. More importantly, in this formula of the transformation of the old power of death to the new emerging mechanism of life management, there exists no such option as 'to *let* die' in the logic of power. Although the old sovereign power and the new bio-power deal with death very differently, it should be clear that for both death functions as a limit, not only in terms of circumscribing a political realm, but also of a threshold element immanent in power that channels it back to life:

> In any case, in its modern form— relative and limited— as in its ancient and absolute form, the right of death is a dissymmetrical one. The sovereign exercised his right of life only by exercising his right to kill, or by refraining from killing; he evidenced his power over life only through the death he was capable of requiring. The right which was formulated as the 'power of life and death' was in reality the right to take life or let live. (136)

As for the modern form of power,

> […] it is over life, throughout its unfolding, that power establishes its dominion; death is power's limit, the moment that escapes it; death becomes the most secret aspect of existence, the most 'private'. (138)

Death is never power's object, it is never a realm in which power thrives, even though we say that power dominates over life, molding its span and is therefore able to determine the time for its end.

The third part of our questions, is how and why the suicidal protester's act could bring these issues to the foreground. Just as the state expresses its concern about its authority by way of various considerations of its subjects' lives, and not every one of them emerges as in need of its attention; so one could kill oneself for all kinds of reasons and in all kinds of ways, and not all of those situations render the state's position controversial, as in the case we are examining now. It is therefore important to stress that the suicidal death in question here is not just any kind of suicide, specifically with respect to its relation with the sovereign power. The feature that interests us here, is not whether it takes place in public as a spectacle, whether it contains a political claim, or whether it is used to accuse the state of anything. The person who kills him or herself doesn't do so merely because they are living an unbearable life, but rather because that the life they are living is outweighed by death

insofar as it is recognized as a life fully captured by sovereign power. With or without conscious awareness of it, or whether is there any attempt to resist it, this death evidences this fact by actually undergoing it through the body, to such an extent that the suicide might as well be just a review of what it means to be a living death, and that the difference between killing oneself autonomously and letting oneself to be killed barely matters. It is this kind of death, and the way in which it forms, together with the punishment of death that no longer really functions as a punishment, the model of the two coinciding deaths, that unfolds before us a specific moment for further inquiry into the limit of sovereign power. What can we say about this final feeble utterance of life that embodies sovereignty in its corpse?

Through the model of the two coinciding deaths, this paper is attempting to explore the three questions mentioned above and the relation between the right of death (the death penalty), and the body that exposes and therefore challenges the sovereign power by a total submitting (suicide). The intention here is not to provide some general arguments (if there ever is any) about suicide and its consequence for sovereign power, nor to suggest that the sovereign's right to kill inheres in every aspect of political life; but to frame out a specific sphere or moment from which we could capture the characteristics of both power and life as they present themselves at their extremity and for this very reason risk a fundamental change. The model is set up to recognize power's limit at the very edge of its ultimate display of might, and to come to realize that the body threatening not to live under its captivation is also located at the same crux. As we unfold interpretations in this direction, it also becomes clear that Tapey is only a literal case of this model, and that he is not alone in this respect.

This paper can also be seen as an attempt to contemplate the mysterious yet interesting passage on the notion of bare life that Agamben has brought up in the preface of *Homo Sacer* (1998) but did not quite followed up on in the rest of the book:

> When its borders begin to be blurred, the bare life that dwelt there frees itself in the city and becomes both subject and object of the conflicts of the political order, the one place for both the organization of State power and emancipation from it. (9)

To simplify for the moment, it is a question about how we understand the possibility of resistance, or whether it could be understood as resistance at all, and how it could be imaginable with all its stakes and potentials. To understand this aspect of bare life status in any protest action happening in reality, is to not dwell in the level of contesting discourses and ideas, and to not deem body as merely emblematic, but as a corporal being that is always already politicized.

Two Kinds of Suicide

A look at the Roman law on its provisions concerning suicide would draw a lot more implications on our attempt to distinguish a certain type of suicide in order to clarify the relation of sovereign power and death. First of all, contrary to the Christian tradition and all legal systems in the history that were influenced by this tradition,

suicide in Roman law is not by nature a problematic act that has to be dealt with; it does not necessarily contain malice as it is sinful in Christianity. In *Justinian's Digest*, not only is there no independent chapter coping specifically with suicide, but it can hardly be said to have independent legal consequences directed against the practice of self-killing itself. Rather, its position is more likely to be one of many factors that may have effects on and alter the outcome of a given legal relation. As we read more carefully and compare all passages on suicide in the *Digest* that are scattered in different chapters dealing with different subjects, we will find that the reason that the taking place of suicide could change a legal situation often has to do with a shift of the status of a legal subject, or has its basis in it. In other words, we will see that the real problem of suicide in Roman law is not about allowing or prohibiting a certain act, but about different lives that are incorporated in law and presented as different legal subjects. What is in need of our attention is the way that the nature of the act is juridically recognized and what it amounts to within a relationship between the life and the authority by which it is captured. For that matter, we find that there are always two kinds of suicide laid down by the law in every situation, distinguished basically by different motives.

Take for example, the laws on succession and will. When dealing with whether a will is effectual or whether a person has a lawful heir, it is essential that the person in question maintains citizenship by the time of his death. The losing of citizenship renders his will ineffectual, and his property shall go to the imperial treasury after his death. For someone who is subject to capital charge or deportation but dies before the punishment being carried out, the time at which he loses citizenship is certainly an issue to be settled in order to clarify the legal effect of his will and the disposition of his bequest. According to a passage of Ulpian, "if someone has been condemned to capital punishment, to fight with beasts or to be beheaded, or condemned to another punishment which deprives him of life, his testament will become ineffectual and that not as at the time when he is killed, but when he comes under sentence. […] The will of someone who is deported will not be made ineffectual immediately, but when the emperor has confirmed the act; for it is then also that he suffers a change of civil status." (*Justinian's Digest*, 28.3.6) Therefore, if he dies before the sentence is confirmed, which is the time when his civil status changes, his will is effectual. However, if he dies by suicide, the situation requires yet another distinction. Ulpian explains in the same passage:

> For *constitutions* make ineffectual the wills of those who have chosen to die rather than be condemned, on account of their consciousness of having committed a crime, although they die still citizens; but if someone [chooses to die] because tired of life or unable to bear ill-health or as a gesture, like some philosophers, their situation is such that their wills are valid. And in a letter to Pomponius [Pompeius] Falco, the deified Hadrian laid down that this distinction applied to a soldier's will also, so that if he chose to die on account of his consciousness of having committed a military crime, his will should be ineffectual; but if it was because he was tired of life or because of pain, his will is valid, or if he died intestate, his [belongings] are to be claimed for his cognates, or if there are none, for his legion. (*Justinian's Digest*, 28.3.6)

Suicide is distinguished into two kinds: one that results in the same consequence as being condemned even before the condemnation is confirmed, and the other that

remains unchanged the principle that one who dies before being sentenced has lawful will and heir. The criteria of distinguishing them, is whether he chose to die out of consciousness of having committed a crime, or whether he just could not bear to live.

This distinguishing of different motives corresponds to the constituent elements required for committing a crime. Another passage written by Marcian explicitly aligns the committing suicide out of consciousness of guilt with the confession of the crime, and equates the death or wounds results from it with the sentence carried out by oneself:

> Accused persons who have been arraigned or who have been caught red-handed, and have committed suicide from fear of the impending charge, leave no heir. Papinian, however, in the sixteenth book of his Replies, has written to the effect that the property of those who lay hands on themselves when they have not been arraigned as defendants on a criminal charge is not forfeited to the imperial treasury; for it is agreed that *it is not the wickedness of the deed that is subject to punishment, but that the fear resulting from guilty knowledge is taken in an accused [who commits suicide] to be as if he had confessed.* Accordingly, they must either have been arraigned or caught in the act for their property to be confiscated if they kill themselves. […] However, the deified Antoninus wrote in a rescript that if someone puts an end to his life through *taedium vitae*[1] or unendurable pain of some kind, or otherwise, he has a successor. […] But this distinction is made, that *a person's motive for committing suicide is relevant, as when the question is raised of whether a soldier who has attempted suicide but has not carried it through should be punished, as if he carried out sentence on himself.* (*Justinian's Digest*, 48.21.3)

Although the laws discussed here is basically dealing with the validity of a will and succession, and the distinction of motives seems to function as a criterion to differentiate what each person deserves according to his deeds, the implications of this regulation resonates less in the will and succession than in the logic of the authority in condemnation. It only becomes clearer, when we compare with the situations and the manners in which the law prohibits suicide in the case of slaves and soldiers, that this distinguishing of motives has actually less to do with granting what one deserves, than securing what the authority has interests in, which is, again, not the life or death itself.

The fact that it is believed that Roman law doesn't punish suicide except for slaves and soldiers has its reasons, but is at the same time misleading, in a way that it attaches the forbidding of an act only to certain identities. What this view has ignored is that for these two kinds of people there are, likewise, two kinds of suicide distinguished according to different motives, which have very different juridical implications, and that the meticulous interpretations by the jurists in distinguishing them are not so much about exempting the kind that the law would have mercy on, as about determining the kind that concerns the authority over their lives— the authority that is expressed through their legal identities as slaves and soldiers. In other words, the point here is again not whether suicide is punishable, but to confirm the limit and

[1] Weariness of life.

the way one can dispose of his or her life according to his or her legal status. Consider these passages about soldiers under the chapter 'Military Law' and 'Punishment':

> Paul, *Views, book 5*: […] A soldier who has attempted suicide but has not carried it through must suffer capital punishment, unless he did so because of unbearable pain or sickness or some sort of grief or for some other cause in which case he is to get a dishonorable discharge. (*Justinian's Digest*, 48.19.38)

> Arrius Menander, *Military Law*, book 3: Every disorder committed to the prejudice of the common discipline is a military offense, as, for example, the crime of idleness, or of willful disobedience, or of sloth. […] If a man has wounded himself or has attempted suicide in some other way, the Emperor Hadrian wrote in a rescript that the circumstances of the matter should be established, so that, if he had preferred to die out of inability to bear pain, or *taedium vitae*, or disease, or madness, or shame, the death penalty should not be inflicted on him, but he should receive a dishonorable discharge; but if he could put forward no such excuse he should suffer capital punishment. The capital penalty should be remitted to those whose misconduct was due to drink or jest, and change of service imposed. (*Justinian's Digest*, 49.16.6)

> Marcian, *Accusers, sole book*: […] For he should by all means be punished unless he was compelled to do so[2] by *taedium vitae* or unendurable pain of some kind. And it is right that he should be punished if he has laid hands on himself without good cause; for he who has not been merciful to himself will much less be merciful to another. (*Justinian's Digest*, 48.21.3)

For a soldier to be punished for committing suicide, it doesn't require him to be accused of committing a previous crime, let alone to have a sense of guilt that should be taken as a confession. He is subject to death penalty once he tries to kill himself, except if he wants to do so out of *taedium vitae*, weariness of life. The reason laid out by Marcian for this— " he who has not been merciful to himself will much less be merciful to another"— seems morally reasonable, but not juridically convincing, since it doesn't explain why it is applied only to soldiers but not normal citizens. Arrius Menander's interpretation that places suicide under the general clause "every disorder committed to the prejudice of the common discipline is a military offense" seems to make more sense, since a soldier's life and his obedience is inseparable with the constituting of a military force. However, the military order that is infringed by the person who attempted to end his life is not restored by keeping him alive, but by punishing him to yet another death. But perhaps none of these questions concerning the reasons behind punishing suicide are more disturbing than the fact that not every kind of suicide is subject to death penalty. The understanding and recognition that the law gives to the suicide out of *taedium vitae* only exposes in a greater contrast that the real motive of the other kind that the law punishes is not only irrelevant, but also unthinkable. Eventually, it is not life itself that the law aims to regulate, but the way that it is referred back to the law.

According to the above passages in the *Digest*, it is clear that the Roman law does not necessarily deem it juridical significant how one disposes his or her life. Criteria

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[2] To commit suicide.

are laid down to interpret the constitution of such act in legal terms, whether through the motive or the way it is committed. However, the real distinction exists between whether or not a suicidal death amounts to an usurpation or an escape of the right that the emperor could probably claim over his or her life. We can say that suicide is punished only when there is an existing right of the emperor over the person's life (or when the existing of this right is probable), and the problem is to determine whether that right is infringed. Hence, in order to preserve this right in all possible circumstances, the committing suicide of a condemned is deemed as a confession of his crime, this way the death preceding the sentencing or the execution of capital penalty shall not eliminate the emperor's right that can otherwise decide this death. Similarly, the suicide of a soldier renders himself in the same position as desertion for the empire.

It is worth noting how the Roman law illustrates the suicide that it distinguishes from the other kind of self-killing which is out of *taedium vitae*, weariness of life. Compared to the latter, the law has much less to say about the kind of life that the former intents to end. According to the jurists in the *Digest*, this type of suicide is often referred to as distinguished from the other, either as a principle that has its exception in *taedium vitae*, or as the exception among self-killings that are generally assumed to be out of *taedium vitae*. At most, it is described as having a sense of guilt, and that it is this sense of guilt— neither the action, nor the consequence— of the suicide that is to be punished or to have effects on the pending charge. This description, however, is itself already a juridical judging, and it refers to the knowledge and the disagreement that the person committing suicide has against the law. In other words, instead of its being alive or dead, this life (or death) is recognized by the law only through what is already juridical significant. The punishing of this specific kind of suicide manifests the paradigm of the tautology that the law recognizes only what it regulates, and punishes only what it is threatened by. This non-recognition of life itself through juridical lens is what makes the already dead punishable, or to put it differently, what makes the death penalty imposed on a person seeking death capable of functioning as a punishment. Once again, we see here the model of the two coinciding deaths.

By way of replacing the suicidal death for one that is sanctioned by the authority, the juridical structure that is thus closed up finds itself arrives, however, at an absurd point of its logic from the point of view of the life that it is supposed to regulate. For the life that would rather render itself dead, the law has just so much to mobilize, that the only thing it can do is to declare once again the right of its death that is already beyond its power to realize. And while the law weighs very differently the suicide that challenges the authority with the cost of life from the suicide in hope for a way out of an unbearable life, how different exactly are the two in the face of the fact that there is really only one intention and one goal for the person committing suicide: to die.

If in the case of soldiers we see how life is comprehensible through juridical terms, then in the case of slaves, whose characteristics in Roman society oscillate between property and human being, we see on the contrary the need to recognize all kinds of details and probables of the biological aspect of life. Before looking into this, it should be noted first that slavery is seemed equivalent to the death of a civil life. Ulpian, *Edict, book 48*: "We should understand a person condemned on a capital charge [as condemned] on grounds for which the appropriate [punishment] for the

condemned is death or loss of citizenship or slavery." (Justinian's Digest, 48.19.2) This means that our comparison of the laws of suicide enters into a different level of life conditions, which has its beginning in already a certain kind of death. Yet concerning its second death, the biological one, the analogy of the two kinds of suicide still applies, which lays bare in a greater extent the at once coincidental and antagonistic relation between the life that is borne by the body, and the life that is recognized by the law.

Under this rationale, suicide of a slave is just something that is not completely avoidable. As 'wicked' as it may be, it could happen just like goods might have defects, and when it happens it should be dealt with directly, just as every other terms and obligations between a vendor and a buyer, or a master and a slave. The edict of curule aedile prescribes that the vendor should disclose every defect of a slave upon making a sale, and by defect it means all kinds of diseases, disabilities, abnormalities, mental conditions, and runaway history that might be relevant to serve the purpose of slavery, including "any attempt which he has made upon his own life." (*Justinian's Digest*, 21.1.1) If any of these circumstances is not declared upon selling, the aediles will grant an action of rescission, which once effected should restore both parties to the position they would have been had the sale never been made. This means the purchaser, besides returning back the slave, has to compensate for the vendor any decrease in value of the slave occurred under his possession; which does not include, however, the case that the decrease in value is caused by the slave's committing suicide or a capital offense. In other words, the reduction in value of a slave that is caused by his or her committing suicide is fairly recognized, both before and after the sale; but the act itself is hardly seemed to be attributable to whom he or she is owned. Another passage by Ulpian discusses the conditions under which a master can deduct what is owed by his slave from *peculium*, the property that a slave is permitted to have under the power of the master, before it is valued when a dispute is in progress. The question lies in whether a decrease in value caused by suicide is deductible; in other words, whether the slave should be (or is able to be) responsible for it. Here again, the answer is negative: the damage is acknowledged but cannot be complemented, any more than it can be said to be assumed by anyone, perhaps even the slave him or herself. But above all, what catches our attention in these legal reasoning are their wordings on suicide:

> Ulpian, *Edict, book 29*: […] The damage arising when a slave wounds himself is not a deductible item, any more than if he had committed suicide or thrown himself over a cliff; *for slaves are naturally allowed to do themselves an injury*. But if a slave with self-inflicted wounds is cared for by the master, I think the slave must pay the master what it costs, although it is true that a master who cares for a slave who has fallen ill is treated as looking after his own interests in the main. (*Justinian's Digest*, 15.1.9)

> Ulpian, *Curule Aediles' Edict, book 1*: Now when rescission is effected, if the slave has been reduced in value, whether mentally or physically, by the purchaser, the latter will have to make this good to the vendor; illustrations would be the debauching of the slave of the fact of the purchaser's cruelty making him a fugitive. […] 1. The aediles direct that any acquisitions either way shall be restored so that when the sale is ended, neither party obtains more than he would have had if the sale had never been concluded. 2. An exception to this is the slave

> who commits a capital offense. […] 3. Also excepted is the slave who does something to end his life. *He is deemed a bad slave who does something to remove himself from human affairs, for example, he strangles himself or drinks a poisonous potion, casts himself from a height, or does something else in the hope of resulting death; it is as though there is nothing that he would not venture against others, who dares to do it against himself.* (*Justinian's Digest*, 21.1.23)

The descriptions of such behavior demonstrate the slave as a mixture of a biological being that is unable to know the seriousness and to take responsibility of what he or she has caused, and a person with his or her own intentions that cannot be accounted for with other's standpoint. The fact that the purchaser has to make good of the reduction in value if his mistreating causes the slave to flee, but not if it brings about the slave to commit suicide, illustrates the distinguished status of the self decision upon one's life. But to say it is distinguished is not to stress the importance of life itself; rather, the life of a slave has its weight, beyond which suicide becomes irrelevant. A threshold exists between where life is important but does not belong to oneself, and where life belongs to oneself but is not anymore important. Thus, the significance of such practice is mindfully calculated yet at the same time remains largely mysterious, that apart from the pricing, there is no further correspondence in the law that responds to such deed as 'removing oneself from human affairs'. The suicidal death is itself impossible to think of for the law, unless it is equated to something else.

Perhaps this paradoxical way of seeing the suicide of a slave as both crucial and usual, and this blindness to life as it is, appears even more obviously in the confusion of whether a slave by ending his or her life amounts to a fugitive. This confusion presents itself as a juridical question of how to rightly determine the intention behind an act, and that only the co-existing of both the act and the intention can constitute an action that could be recognized by the law. However, the need to clarify the distinction of suicide and fugitive indicates that the first thing occurs to those it may concern is not the life of the slave, but the breaking away from control.

> Ulpian, Curule Aediles' Edict, book 1: Ofilius tells us what a fugitive is: He is one who remains away from his master's house for the purpose of flight, thereby to hide himself from his master […] It cannot even be said that a slave is a fugitive who has come to the stage that he hurls himself from a height (though one could declare a fugitive one who goes up to a high point of the house to cast himself down); rather does he desire to end his life. Vivian also says that the common assertion, particularly of the ignorant, that a slave who stays away for a night is a fugitive, if it be without his master's consent, is not true; one has to assess the man's purpose in so acting […] Caelius also writes that if you buy a slave who throws himself into the Tiber, he will not be a fugitive so long as his only motive was the desire to end his life; but if he first planned to run away and then, changing his mind, flung himself into the Tiber, he would be a fugitive; he says the same of a slave who throws himself from a bridge. And all that Caelius says is correct. (*Justinian's Digest*, 21.1.17)

What is the difference between hurling from a height, casting oneself from a high point of the house, and throwing oneself into the Tiber? Perhaps the confusion between fugitive and suicide is a real one, since one could argue how big a step does

it take for a slave who desires to escape from his or her life to end up committing suicide. Yet their meanings for the law and the society are so vastly different: a fugitive aims to challenge the rule and the social order that are meant to have them chained; a slave who commits suicide is only disposing his or her own body that the law has no concern. Another passage on the definition of the suicide of a slave expresses this even more clearly, that if the slave's motive concerns only his body (and not the law), it cannot even be said to be a 'suicide':

> Paul, *Curule Aediles' Edict, book 1*: […] A slave acts to commit suicide when he seeks death out of wickedness or evil ways or because of some crime that he has committed, but not when he is able no longer to bear his bodily pain. (*Justinian's Digest*, 21.1.43)

This is equally saying that a slave commits suicide when he or she knows that he or she is committing suicide in juridical sense, but not when he or she is merely seeking death. At the end, besides *taedium vitae* and the consciousness of guilt, what exactly is this 'wickedness' or 'evil ways' to kill oneself, if not the deliberateness in resisting the law by taking away one's own life, or on the other hand fulfilling the law by rendering one's own death?

Suicide has different kinds: those who die alone for themselves and those who by dying touch the very stake of the authority— "Death is the only meaning we have for the extreme penalty." (Celsus, *Digest, book* 37; Justinian's Digest, 48.19.20)— and this distinction stems not from the different qualities of real motives, but from the logic of the law. The structural analogy of the two kinds of suicide existing across citizens, soldiers, and slaves, indicates that what is in question is the juridical implications drew from the way a person disposes his or her life, life that is already saturated with different juridical significances and serves different legal functions. And with the case of the slaves, whose lives are literally always being possessed, the difference between the two kinds of suicide begins to blur, right at the point where each of them is in its own extremity. At the peak of the sovereignty's final means, we see the law while capturing life risks to expose itself as only capturing itself, as well as life that threatens the authority by paying its price with death.

The Death Penalty

In his seminar on the death penalty, Derrida (2013) does not proceed his discussions in a course that starts from identifying the essence of this cold human machine and ends in justifying a standpoint of whether or not to reserve or improve it. Rather, he does the other way around: through detours of many literature works and eloquent discourses, he returns to and rethinks the death penalty by way of what the abolitionists and proponents argue differently, as well as what they do not realized that they share in common. 'What is the death penalty?' is a question for the abolitionists, since their efforts to terminate the death penalty in human history must found on the basis of what it is to them. It is also a question that sees the possibility for another version of human history, in which this machine would not any more be a necessity in the mechanism of law, and that an alternative that features a principle opposing it could be imagined. What is it that the abolitionists oppose to, and in the

name of what? Has the core issue that characterizes the role of death penalty been made clear amid these arguments, or has it retreated to yet another disguise?

These questions are certainly too complicated to be answered completely. The two threads that Derrida returns to from time to time are 'cruelty' and 'exception', by which he examines the constellation of notions such as sovereignty, penal law, the law in general, right of life, and death etc., that the many literatures on death penalty have brought together. What is the 'cruelty' and 'exception' that marks the significance of death penalty, and why is this important? Perhaps, amid all the clues that Derrida has proposed but not concluded, we should start with a simple question he has posed, that is how we are able to distinguish the death penalty from other kinds of deaths. 'Death *tout court*' is the term he uses, namely, all sorts of death no matter from natural reasons, murder, or suicide. What is the character that distinguishes the death penalty from all of them? If the abolitionists oppose to the death penalty because of its cruel and exceptional character, how are these characters different from those of other kinds of death? We know that death itself is not the issue, nor is killing. Derrida makes this clear by pointing out that abolitionism is against death penalty, not against war. (2013, 54-5) Nor should the notion of cruelty remain at the level of the process and physical means of the execution— for example, the bodily torture and the spectacle— if so, the abolitionism would no longer have its standpoint today when most death penalties are carried out secretly and in ways that are the most effective and the least suffering. Ultimately, the specific kind of cruelty that characterizes the death penalty has to do with the fact that this is a death that is decided by others. The death penalty is cruel because even the most horrible murder can only contain a will to kill, and cannot 'decide' that one should die; it is cruel because it does not only requires one's death but also one's submission to this decision. It is a cruelty that is not out of danger, torture, or even fear, but out of being decided, out of a decision. Thus we see the intertwining of the two threads: cruelty and exception, the latter being precisely the logic of the sovereignty's decision, according to Carl Schmitt.

Needless to say, the death penalty represents the sovereign power par excellence, the metaphor of the sword of the prince. However, this particular position that death penalty stands does not render itself only as a specific kind of death that has an additional character of being decided by the state; rather, the existence of the death penalty exemplifies the fact that the concept of death itself is fundamentally capable of being marked by the mechanism of distinction, which functions between human and animal, subject and bare life, or between a death to be recognized and a perishment that makes no difference from being alive. As Derrida says, drawing from Heidegger, that "only Dasein dies, only Dasein has […] the right and the possibility of dying, whereas the animal stops living or perishes (crève) but never dies […]." (2013, 150) In that political space that unfolds in the death, there is always the question of arising above the natural and determining a certain stance of what it means to be human, and the mission of carrying it through. The death penalty in this sense realizes every precision of the death, from the sentence to the execution, from the way it is carried out to the time it is carried out, from an official identification of the executed to a clear-cut division of life and death. These are the terms not only which the state has a right to, but also which it needs to make efforts for— we only have to think about how difficult it is to keep death prisoners alive and even to save them back when they commit suicide, just in order to make sure they will die as the law prescirbes. The death penalty is not the particular vis-a-vis the death in general; it

is the battle field that emerges from the always ongoing politicization of the biological perishment in the structure of sovereignty, the metaphoric scene of torture that is depicted by Foucault in *Discipline and Punish* (1977). Thus, while "there is no law or right that would not be or imply a right to death," (Derrida 2013, 171) neither is there any death that could not be juridicalized, exceptionalized, or bearing a decision.

The role of the death penalty encounters its own paradox, when the death that is decided with such precision meets the autonomy of the person condemned to death. As we have repeatedly seen in previous discussions on suicide, the problem of death being the ultimate means of the state is that it is based on the simple presumption that no one would prefer to die, and consequently it could lose its functions if the person in question has literally nothing to lose in his or her life. For those motivated with a death drive, can the sovereign power capture them? Can the law ever do justice to those who murder just in order to receive death punishment? One might border this limit of the sovereignty by disposing his or her biological body. What happens when the decision of the other coincides with that of one self? What happens when one's submission to the law is in every bit full and complete, that it is impossible to tell whether this death is decided by the state or by oneself?

The death of Socrates may be one of the most famous cases that perfectly demonstrate this situation. Socrates was accused of refusing to recognize the gods recognized by the state and of corrupting the youth. Although it has rarely been thought that Socrates committed suicide, the question of whether he did so is often raised. The reason for this confusion (perhaps a rather 'correct' one) is not only that the Athenian jury sentenced Socrates to be his own executioner and to take the poison hemlock by his own, but also and more importantly that he refused the opportunity to be sentenced to exile instead of death, as well as his friend Crito's offer to help him escape. The sacrificial character of his death was presented in two aspect: first, that he was guilty not for dodging what is right, but for pursuing what he believed to be the truth; and second, that he refused to escape from the death penalty not because he admitted that he was guilty, nor because he believed that the judgement has done justice to him, but because *he had chosen* to be a subject of the State and to obey her laws— an independent reason that makes the whole case of his criminality out of the question. Socrates had to die as much as he shouldn't have, since he had offended the people of Athens by resorting to a more divine law. However, this controversy got even more intensified, when he found himself to be bound to obey what he had freely agreed upon, notwithstanding what the accusations were, and decided that he should die as the State wanted him to. We see this point even in the arrangement in Plato's *Crito* (2011), that Socrates reasoned his own decision not in a first-person narrative, but in the narrative of the law. The law had decided Socrates' fate, but this decision was overruled and replaced by that of his own. On the contrary, and even more paradoxically, had Socrates escaped, he would remain forever in relation with the State's decision by being an outlaw.

Conclusion: the Cost of Death in Modern Politics

Every one of us, every life borne by the body, is more or less, for better or worse, at once that which reloads and challenges the law. In every protesting practice that is

suicidal or life risking such as self-immolating or hunger strike, whether it is out of religious believe, and whether it appeals symbolically or practically (for example, prisoners who commit suicide in order not to submit to the sentence), we see the structure of sovereignty of which the death of Tapey appears as the paradigm. By analyzing the relationship between suicide and sovereign's right of death, the model of the two coinciding death, we see on the one hand the life that is captured by the law, and on the other, the sovereignty that is at its limit. In this relationship of which the two aspects are at once overlapping and antagonistic, the body equivocates the law not by escaping from it, but by taking on the same road that the law prescribes. The resistance then, is a subtle task, and if it is ever effective, it is not because it draws a greater and higher force to fight against the power, but because it exposes the logic of the sovereignty.

Thus the two deaths coincide, but not just in any contingent way. Amid the ethos that are hard to tell whether out of extreme desperateness or radical determination, the suicidal death in question takes on the path to testifying the ultimate fulfillment of the sovereign power of death. By a fairly minute subtlety, this seeming submission par excellence of the body somehow happens to expose the emptiness of power, at the very height of its display of might, leading power to confront its own limit before death. As the illogical 'to *let* die' of the side of sovereignty coincides with the incomprehensible 'to *let* kill' of the side of bare life, we see a possible space in which bare life "becomes both subject and object of the conflicts of the political order, the one place for both the organization of State power and emancipation from it." (Agamben 1998, 9)

One of the most essential points that we have not yet adequately clarified in Derrida's discussion on the death penalty, is that he conceives of the exception par excellence not as the sovereign's decision on one's death, but its prerogative to pardon. Derrida cites a passage of Badinter, a French lawyer and an eloquent abolitionist, in which he stated: "There is no sentencing to death in justice. Only a death wish that moves from the criminal court up toward the prince. It is up to him to hear it or refuse to hear it. He is the almighty one." (Derrida 2013, 107) Although the prince does not select the one to be condemned, he is offered to make the final decision on whether to follow the judgement of the court or to pardon and let live. This right to pardon and the relation between the juridical mechanism and the authoritative one is very much in accord with the notion of *auctoritas* and its relation with *potestas* that Agamben discusses in *The State of Exception* (2008). In Roman jurisprudence, *auctoritas* inheres not in legal institution, but in person. In private law, it is the power in the person *sui iuris* that make valid the legal action of whom he is in charge of, for example when a father authorizes a contract made by his son. In public law, the *auctoritas* of the Senate grants legitimacy to the rule of the magistrates or the people. Auctoritas can only act on a given legal situation which itself has no power to create. It is distinct from *potestas* since it "seems to act as a force that suspends *potestas* where it took place and reactivates it where it was no longer in force. It is a power that suspends or reactivates law, but is not formally in force as law." (79) Together, the two form a binary and dialectic system, in which the normative and the anomic, the juridical and the metajuridical, and the law and life need one another in order to get the juridico-political machine into work. (86) It is in this at once antagonistic and supplementary relationship of *auctoritas* and *potestas*, that one of Agamben's diagnoses of modern biopolitics lies:

> As long as the two elements remain correlated yet conceptually, temporally, and subjectively distinct, […] their dialectic— though founded on a fiction— can nevertheless function in some way. But when they tend to coincide in a single person, when the state of exception, in which they are bound and blurred together, becomes the rule, then the juridico-political system transforms itself into a killing machine. (86)

This machine that kills, in contrast to the guillotine, needs not anymore the judgement of the court, nor the authority to pardon of the prince. The spectacle of the execution of death penalty that was necessary for the sovereignty, the instant in which a state "best sees itself" and "acknowledges and becomes aware of its absolute sovereignty," (Derrida 2013, 38) this self-recognition of the law through its decision over life, is no longer important in this killing machine. When Derrida, extending Kant's arguments, points out that "the death penalty marks the access to what is proper to man and to the dignity of reason or of human logos and nomos," (32) and that there is something still worse than the death penalty, in which those who are like beasts don't even have the right to be condemned to death and to a burial place (32), we see the distinction that is no longer presented between life and death but between death and corpse (33) continues to exist in our time, when life reduces more and more to corpse and dying is less and less entitled to a legal name. In the modern world of which Agamben sees the paradigm in concentration camp, the state kills by way of all kinds of massive, systematic, life-related governing policies, causing large-scale impact on life conditions in general, without recognizing each life through the law and granting them a legal subject when die. The sovereignty determines your death without ordering it; it kills but does not take life, as the latter at least has an object.

On the other hand, parallel to this indiscriminate operation of the right to kill of the sovereignty, we see how in the age that is marked by what Foucault terms the power to foster life and the mechanisms of neo-liberalism, suicide dissolves into merely a private choice and a personal right (on which the legitimacy of euthanasia is also based) that no longer threatens the state as it could have. Incidents of suicidal protests don't cause that much sensational attention as before, if not vanish from the news. And although the sacrificial motive of such protesters can be appreciated, it is not anymore in the position that enables the state power to be exposed. Heroicness is on the verge of extinction, and all that are left are private sad stories.

Perhaps along with this shift of paradigm of the sovereignty and power, the place in which bare life finds itself at the crux of both power operations and the position of emancipation has also changed. The analogy between our fate today and the slave in ancient Rome comes up even clearer, in a way that our life and death signifies less the political significance, and more the economic impact— we are more recognizable as a fugitive than as a person who commit suicide. And for those who worked in workshop places like Foxxcon, where disciplines and regulations constituted the main part of their environment and saturated their bodies, and decided to walk up to the top of the building to quit this life, were they doing so out of *taedium vitae*, or as responding to or even protesting against the machine that have them captured? Or rather, the two blurs and their differences don't matter?

The reality is complicated, however, in a way that all of the above different paradigms can exist at the same time, though not necessarily acting in concert. During the past year (2013-14) in Taiwan, there were the suicide cases of Chang (張森文) and Lyu (呂阿雲), both of whom were, so to speak, killed by corrupted land expropriation projects that destroyed their ways of life. There has been an ongoing energy policy that relies on nuclear power plants with serious safety concerns, as well as an impending cross strait service trade agreement that would influence millions on economic, medical caring, food security, and labour conditions aspects. There was the activist Lin Yi-hsiung who chose to go on infinite hunger strike to protest against the life risking nuclear power energy policy, while the main-stream society and many politicians paid superficial respect to his 'personal choice'. And finally, at the peak of the hustling social mobilization triggered by all of the above issues, there was the state, deciding that it needed more attention for its sovereignty, executed five prisoners in death row, two of whom were thought to be possibly innocent while NGOs had already initiated rescue campaign— still, there is the death that is decided by the law and that the authority did not pardon.

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