

The Bull of Phalaris: Atrocity in the Canon

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“They have not asked themselves what there is in brutality which is reprehensible.”

George Sorel

The Ugly Fact

Political theory is obsessed with violence. From Plato’s artistic anxieties to Sorel’s revolutionary fantasies, the core questions guiding normative inquiry into political affairs have tended to hover just above (and sometimes well beneath) the surface of brute force. According to Sheldon Wolin, “It has been and remains one of the abiding concerns of the Western political theorist to weave ingenious veils of euphemism to conceal the ugly fact of violence.”¹ Whatever the other “abiding concerns” might be, political theory undoubtedly has a great deal to say about the vulnerability of human lives and human communities to the consequences of escalating social conflict and the devastating prospect of violence, which always threatens to annihilate life—both literal and political.

If political theory occasionally resembles a protracted discussion about violence, the same cannot be said of atrocity. While a legalistic formulation of “cruelty” attends the evolution of social attitudes toward punitive violence, the literature is surprisingly silent on atrocity qua atrocity. Atrocity is surely violence, but it is violence of a different order altogether. Attempts to define atrocity in our own time typically abound in superlatives—unthinkable, unspeakable, unconscionable, inhuman, monstrous—but grim adjectives do not get us very far conceptually. Just what kind of violence are we talking about? I shall define atrocity simply as *transgressive violence in the extreme*. Atrocity is *transgressive* insofar as it not only defies widely accepted moral norms, but mocks them in its excess. Atrocity is an inherently normative term because, while

¹ Sheldon S. Wolin, *Politics and Vision: Continuity and Innovation in Western Political Thought*, Expanded edition (Princeton, NJ: Princeton University Press, 2004), 197.

some may argue in favor of brutal violence under specific conditions, no one argues in favor of atrocities. Quite the opposite. Atrocity is that which must never occur. Its very presence suggests that something has gone terribly wrong.

Curiously, the intuitions that inform this definition of atrocity are almost completely absent in the literature. While there is persistent canonical concern with violence in general, there does not appear to be a concomitant interest in manifestations of brutality that flagrantly defy all moral norms. Where something recognizable as atrocity crops up in canonical texts, it tends to be characterized as non-instrumental and extra-political, akin to crime. Still, even if a bare act of atrocity is extra-political (and this is already doubtful), the underlying assumptions that inform such a judgement are inherently political. They draw attention to the conditions of the moral universe from which they spring, including the limits of political action, and the forces that produce and reproduce attitudes towards violence. To begin my discussion of atrocity, I first consider the figure of the tyrant and tyrannical violence in Western political thought as a common vehicle for early thinking about transgressive violence. Of the many disquisitions on tyranny, Seneca's distinction between ordinary cruelty and what he calls "bestial savagery" establishes the basis for a theory of atrocity, but it does not go far enough. I then survey various theoretical discussions of transgressive violence up to the present, emphasizing the recurring theme of non-instrumentality. Finally, I present a tentative step towards a theory of atrocity.

Crudelitas Tyrannon

In the Western tradition, there are few figures as closely associated with transgressive violence as that of the tyrant. Since Herodotus, and perhaps earlier, tyranny has been used as an umbrella metaphor for all manner of immoral political behavior, especially unrestrained violence

and cruelty. The tyrant represents absolute transgression against heaven and earth, the looming threat of arbitrary cruelty against the order-making forces of politics and reason. Yet the earliest uses of the term τύραννος were morally neutral. It simply described non-hereditary rulers or usurpers and implied nothing about the exercise of power, malevolent or otherwise. Though some tyrants adopted severe methods and displayed a concerning irrationality of behavior, others were popular and apparently beneficent rulers. Still, the more common experience of the brutal and irrational tyrant seems to have given rise to strongly pejorative connotations. By the time Plato wrote on the subject, the tyrant had become a notorious bogeyman representing the worst dangers of public life.

In Book IX of *The Republic*, Plato's Socrates describes the tyrant as the antithesis of an enlightened statesman—"one who, either by birth or habit or both, combines the characteristics of drunkenness, lust, and madness."² Instead of mending social rifts, the tyrant exacerbates them. He "change[s] from man to wolf" and places his subjects under "the harshest and bitterest of servitudes," a form of rule characterized in equal measure by a flagrant contempt for the public good as well as the indulgence of every base desire.³ Plato attributes the tyrant's excesses to "a terribly bestial and immoral type of desire" shared by even "the outwardly most respectable of us."⁴ In a kind of proto-Freudian psychological analysis, he argues that while such desires appear in dreams, the tyrant distinguishes himself from the rest of us by acting on them. Plato's account of the tyrant is both descriptive and prescriptive; it partly reflects his knowledge of real historical tyrants, but also (perhaps even primarily) exaggerates the tyrant's vices in order to demonstrate the virtues of a philosopher-king by contrast.

² Plato, *The Republic*, trans. Desmond Lee, 2nd ed. (New York: Penguin, 2003), 310–11.

³ Plato, 303, 308.

⁴ Plato, 309.

It is striking just how stable the tyrant's character remains for more than two millennia. The tyrant is "a stirrer-up of war"⁵ (Aristotle), "the image of depravity"⁶ (John of Salisbury), under whom life is "the most unjust and harshest form of slavery"⁷ (Cicero), "the same as to be mauled by a ferocious animal"⁸ (Thomas Aquinas). "Of all of the plagues that afflict humanity," Diderot explains in the *Encyclopédie*, "there is none more fatal than that of a tyrant."⁹ Erasmus distills the bleak consensus in especially nightmarish language:

[A] terrible, loathsome beast: formed of a dragon, wolf, lion, viper, bear, and similar monsters; having hundreds of eyes all over it, teeth everywhere, fearsome from all angles, and with hooked claws; having a hunger that is never satisfied, fattened on human entrails and intoxicated with human blood; an unsleeping menace to the fortunes and lives of all men, dangerous to everyone especially to the good, a sort of fateful blight on the whole world, which everyone who has the interests of the state at heart curses and hates; intolerable in its monstrosity and yet incapable of being removed without great destruction to the world, because its malevolence is supported by armed forces and wealth. This is the picture of a tyrant, unless something even more hateful can be depicted.¹⁰

Beyond hyperbole, several themes recur in these accounts: the tyrant rules arbitrarily, prioritizes his own animalistic appetites above the public good, and often uses violent and cruel means to do so. The worst tyrants not only combine these vices, but revel in them. From the twilight of the polis to the Glorious Revolution, the sins of which the tyrant stands accused vary only in their details and circumstances.¹¹ In every case, the tyrant as metonymy for arbitrary injustice remains constant.

⁵ Aristotle, *Politics*, trans. H. Rackham (Cambridge, MA: Harvard University Press, 1959), 463.

⁶ John of Salisbury, *Policratus*, trans. Cary J. Nederman (New York: Cambridge University Press, 1990), 191.

⁷ Cicero, *On the Commonwealth and On the Laws*, trans. James G. Zetzel (Cambridge University Press, 1999), 30.

⁸ St. Thomas Aquinas, *Aquinas: Political Writings*, trans. R.W. Dyson (New York: Cambridge University Press, 2002), 15.

⁹ Denis Diderot and Jean le Rond d'Alembert., eds., "Tyran," in *Encyclopédie Ou Dictionnaire Raisonné Des Sciences, Des Arts et Des Métiers* (Paris, 1765). My translation.

¹⁰ Erasmus, *The Education of a Christian Prince*, ed. Lisa Jardine, trans. Neil M. Cheshire and Michael J. Heath (New York: Cambridge University Press, 2003), 27.

¹¹ Robert Zaller, "The Figure of the Tyrant in English Revolutionary Thought," *Journal of the History of Ideas* 54, no. 4 (1993): 593.

Still, it would be inaccurate to discern an early formulation of atrocity in the figure of the tyrant. It is not because the tyrant commits uniquely horrific acts of violence that he is reviled in canonical accounts. Rather, the tyrant's distinctive threat stems from his subversion of the law. It is perhaps only a slight overgeneralization to claim that the canonical objection to tyranny is not primarily moral but political. However innovative or obscene, the means of tyrannical violence inevitably pose less of a moral dilemma than the ends to which they are directed. Because the end of tyranny is servitude and arbitrary terror, it necessarily exceeds the horror of any specific tyrannical act. As Arendt points out, "the time-honored fear of [tyranny] is not exclusively inspired by its cruelty ... but by the impotence and futility to which it condemns the rulers as well as the ruled."¹² Objections to particularly brutal episodes of violence do occasionally arise, but this kind of *ad hoc* moral censure is levelled at conventional kings and tyrants alike. Only the latter insists upon the "banishment of the citizens from the public realm and the insistence that they mind their private business,"¹³ thereby making brutes of us all. Hence, the primary difference between "good" king and "bad" tyrant is not essentially moral, but political. The tyrant may be a monster, but he is a political monster and his violence retains the presumed moral neutrality of any other tool of state.

The Bull of Phalaris

While a notion of virtue is inextricable from pre-modern political philosophy, one searches in vain for a morally grounded opposition to forms of violence thought to go too far. To some degree, this may be an inevitable consequence of attempting to reconcile a gap of several thousand years. "Ancient ethics," Julie Annas observes, "is another country, and they do things differently

¹² Hannah Arendt, *The Human Condition*, 2nd ed (Chicago: University of Chicago Press, 1998), 2002.

¹³ Arendt, 221.

there—and think differently about them.”¹⁴ Warfare, for example, features prominently in Plato’s *Republic*, but not the morality of war as such. Atrocity is ultimately a *deontological* concept and the great works of ancient Greek ethics are not, which is simply to say that the moral life was not treated as a matter of demarcating boundaries or proscribing specific acts. The Greeks were driven instead by a concern with an agent’s happiness [εὐδαιμονία], which is of course not directly analogous to modern notions of ethics, deontological or otherwise.¹⁵ Yet, even if we choose to overlook the ancient unwillingness to consider the limits of large-scale violence in its own right beyond the figure of the tyrant, what accounts for the subsequent silence of two millennia?

It is difficult to find *any* canonical engagement with large-scale human suffering until the twentieth century. There are occasional examples, of which John Foxe’s so-called “Book of Marytrs” and Bartholomé de Las Casas’s *Short Account of the Destruction of the Indies* are perhaps the best known, of accounts in which extreme violence is described in gruesome, even lurid, detail.¹⁶ But while these accounts contain impassioned and emphatic moral commentary, they lack sustained philosophical exploration. As is so often the case, the moral outrage of atrocity is assumed to be self-evident. In his account of the English Civil War, Hobbes estimates in passing that it may have caused the deaths of “near 100,000 persons.”¹⁷ Montesquieu describes the Spanish extermination of “a people as numerous as the entire population of Europe”¹⁸ in the New World.

¹⁴ Julia Annas, “Ancient Ethics and Modern Morality,” *Philosophical Perspectives* 6 (1992): 120.

¹⁵ This raises the possibility that in probing the canon for traces of atrocity, I am making anachronistic demands of ancient texts. Lest I be accused of such a crime, consider the stakes of the work itself. As George Kateb points out, canonical authors typically presume to speak universally of human phenomena in general. “We can reasonably want the moral psychology that is so variously, intricately, and subtly on display in the canon to prepare readers for anything awful, whatever the scale. George Kateb, “The Adequacy of the Canon,” in *Patriotism and Other Mistakes* (New Haven, CT: Yale University Press, 2006), 387.

¹⁶ John Foxe, *The Acts and Monuments of John Foxe: A New and Complete Edition*, ed. Stephen Reed Cattley, 8 vols. (London: R.B. Seeley and W. Burnside, 1841); Bartholomé de Las Casas, *A Short Account of the Destruction of the Indies*, trans. Nigel Griffin (New York: Penguin, 2004).

¹⁷ Thomas Hobbes, *Behemoth, or the Long Parliament*, ed. Ferdinand Tönnies (Chicago: University of Chicago Press, 1990), 95.

¹⁸ Montesquieu, *Persian Letters*, trans. Margaret Mauldon (New York: Oxford University Press, 2008), 164.

Hegel speculates that “nearly seven million people have been wiped out”¹⁹ as a result of European colonization of the Americas—but he makes these observations only to underscore the supposed historical inevitability of this process and not the moral dimension of colonial genocide. Beyond these brief asides, political theory has rarely paused to consider large-scale suffering.

With the rise of the modern state and its monopoly on spectacular forms of punitive violence, an articulation of deontological moral opposition to certain forms of violence does gradually emerge. From antiquity through late modernity, a narrow moral conception of *cruelty* informs European debates over torture and punitive justice more generally. The moral opposition to torture, in particular, culminates with Voltaire and Beccaria, for whom it was incompatible with new ideas about basic human dignity.²⁰ Until then, there is rarely an explicit engagement with forms of violence that transgress all norms. Yet if it is difficult to discern a classic formulation of atrocity in the figure of the tyrant, this is not because the ancients were unconcerned with transgressive violence. Rather, they simply did not view it as a properly political problem. Where something like a concern with atrocity does arise, it is in almost every case dismissed as extra-political, the prerogative of madmen and beasts. This conceptual distinction between properly political violence and extra-political violence provides some insight into what I am calling atrocity. Nowhere is this distinction more apparent than in discussions of cruelty.

Through the lens of cruelty, Seneca is among the first to consider the distinction between ordinary and transgressive violence, let alone political and extra-political violence. Cruelty, he explains, is *atrocitas animi in exigendis poenis*, a certain “grimness of mind in exacting

¹⁹ Georg Wilhelm Friedrich Hegel, *Lectures on the Philosophy of World History*, trans. H.B. Nisbet (New York: Cambridge University Press, 1975), 163.

²⁰ Edward Peters, *Torture*, Expanded edition (Philadelphia: University of Pennsylvania Press, 1996), 149.

punishment.”²¹ This definition emphasizes an explicit punitive connotation. To underscore the instrumentality of cruel acts, he invokes Phalaris, the 6th century tyrant of Akragas (Agrigento) in Sicily.

Those, then, whom I call cruel are people who have reason to punish but no moderation in doing so, as in the case of Phalaris. His savagery was never actually turned on the innocent, we are told. It just went beyond the limit of anything humane or justifiable.²²

According to tradition, Phalaris had alleged criminals roasted alive in a hollow brazen bull. The mechanism’s unusual design apparently rendered the sound of his victims’ screams into that of a braying beast. From the earliest account in Pindar, Phalaris rapidly became a symbol, not just of tyranny, but of excessive cruelty.²³ Aristotle mentions him alongside other alleged cannibals in the *Nicomachean Ethics*; Plutarch muses that he must have been sent to the Agrigentines as divine vengeance for some unspeakable crime;²⁴ Cicero accuses the Roman magistrate Verres of cruelties on par with those of Phalaris;²⁵ and so firmly did the Epicureans and Stoics believe in the superiority of their respective creeds that, as a test of ultimate self-control, they were convinced that a true sage would positively enjoy a turn in the brazen bull. The notorious “Sicilian bull” even makes an appearance in Dante’s *Divine Comedy*.²⁶ By using Phalaris as an example, Seneca is simply drawing upon a long tradition in which the tyrant of Akragas exemplifies the apotheosis of unrestrained political terror.

Though Seneca insists upon a narrow definition of cruelty as punitive-cum-excessive violence, he is not always consistent on this point. He clearly wishes to distinguish cruelty from

²¹ Seneca, *Moral and Political Essays*, ed. J.F. Procopé and John M. Cooper, trans. John M. Cooper (New York: Cambridge University Press, 2010), 160.

²² Seneca, 161.

²³ Pindar, *Pythian Odes*, vol. 1, lines 95-100.

²⁴ Plutarch, *Moralia*, trans. Phillip H. De Lacy and Benedict Einarson, vol. 7 (Cambridge, MA: Harvard University Press, 1959), 209.

²⁵ Marcus Tullius Cicero, *Political Speeches*, trans. D.H. Berry (New York: Oxford University Press, 2006), 84.

²⁶ Dante Alighieri, *The Divine Comedy*, trans. Mark Musa, vol. 1 (New York: Penguin, 1984), 315.

irrational savagery [*saevitia*] or bestiality [*feritas*] exercised for pleasure, but he does occasionally conflate the concepts.

Cruelty is utterly inhuman, an evil unworthy of a mind so mild as man's. It is bestial madness to rejoice in wounds and blood, to cast off the man and turn into an animal of the forest. ... What makes savagery especially loathsome is that it goes beyond the bounds first of custom and then of humanity. Seeking out new forms of punishment, summoning its ingenuity to think up devices for varying and extending the pain, it delights in human affliction. This is when that dire disease of the mind has reached the ultimate insanity. Cruelty has become a pleasure, killing men a positive delight.²⁷

Seneca is careful to distinguish between legal and moral right. If the bull of Phalaris represents the sheer brutality of state violence pushing beyond the margins of legitimacy, it is because the method is not only gratuitous but self-indulgent. Both tyrant and conventional king are entitled to enforce retribution in accordance with state necessity, including the most brutal tortures, but only the latter is a properly political actor. Given the profusion of antique tyrants, why does Seneca target Phalaris for special condemnation? The moral problem seems to lie with the *pleasure* Phalaris apparently derived from cruelty, a base tendency shared with animals—and a tendency Seneca may have detected firsthand in a young Nero.

Seneca's role as Nero's tutor and mentor raises questions about the intended audience for his practical philosophy and it does seem likely that it was at least partly directed at tempering his young ward's vices.²⁸ Whatever positive influence Seneca may have hoped to exert in this regard however, it was not to be. Like Phalaris before him, accounts of Nero's violent outrages, both real and imagined, gradually coalesced to produce an acutely evil portrait of his reign.²⁹ Within a few centuries, Nero's reputation as the absolute worst of all tyrants rendered Phalaris and his

²⁷ Seneca, *Moral and Political Essays*, 155.

²⁸ Emily R. Wilson, *The Greatest Empire: A Life of Seneca* (New York: Oxford University Press, 2014), 105–6.

²⁹ Though Nero was popular in his own time. Edward Champlin, "Nero Reconsidered," *New England Review* 19, no. 2 (1998): 97–108.

brazen bull all but quaint by comparison.³⁰ For my purposes, it is worth simply pointing out that the subsequent literary fixation on Nero, as with Phalaris, hinges upon the sadistic pleasure he is said to have derived from indulging his worst inclinations. Both tyrants personified the extreme opposite of a detached and impartial exercise of power: they *enjoyed* brutality.

For many canonical thinkers, an emphasis on detached and impartial punishment is a common means of establishing a sharp contrast between tyrannical and conventional rule. John of Salisbury's vivid description of the "sword of the dove" which "quarrels without bitterness" and "slaughters without wrathfulness" is representative of this ideal.³¹ A just ruler must establish emotional distance from the neutral prosecution of violence. The question of cruelty arises for Seneca only when the exercise of sovereign power passes beyond "the bounds ... of custom" and especially when it passes beyond "humanity," i.e., when it becomes pleasurable. This idea has enjoyed great longevity in the Western political imagination.³²

Whether punishment is meted out by a state actor or by an individual against a private transgressor, retribution lies firmly at the heart of Seneca's formulation of cruelty. Atrocity is something else, something mysterious. Seneca presents hypothetical counter-examples of brutal violence to distinguish his narrow legalistic definition of cruelty from transgressive acts of "bestial" violence, which he believes constitute a distinct phenomenon:

But there are people who do not exact punishment and yet are cruel, like those who kill strangers whom they encounter, not for gain but for the sake of killing, and are not content just to slay — they are positively savage, like the notorious Busiris or Procrustes or the

³⁰ William B. Gwyn, "Cruel Nero: The Concept of the Tyrant and the Image of Nero in Western Political Thought," *History of Political Thought* 12, no. 3 (1991): 433.

³¹ John of Salisbury, *Policratus*, 31.

³² Foucault, for instance, argues that it was the desire for emotional detachment that eventually led to the abolition of public forms of spectacular punitive violence in Europe, which "betrayed tyranny, excess, the thirst for revenge, and 'the cruel pleasure taken in punishing'" Michel Foucault, *Discipline and Punish: The Birth of the Prison* (New York: Vintage Books, 1979), 73. In our own time, liberal advocates for the use of "ethical" torture insist upon both instrumental necessity and emotional detachment from the infliction of pain. For example, see Alan Dershowitz, "Tortured Reasoning," in *Torture: A Collection*, ed. Sanford Levinson (New York: Oxford University Press, 2004), 257–80.

pirates who beat their captives with whips and throw them alive to the flames. Yes, that certainly is cruelty. But it does not involve a pursuit of retribution (they suffered no damage), nor anger at someone's misdeed, since there was no preceding crime. So it falls outside our definition, which covered simply the lack of self-control by the mind in exacting punishment. We might say that it is not 'cruelty' [*crudelitas*] but a 'bestiality' [*feritas*] that takes pleasure in being savage [*saevitia*]. We might call it 'madness', since there are various kinds of madness and none more obvious than that which reaches the point of slaughtering men and tearing them to pieces.³³

Seneca insists that because transgressive non-instrumental violence is not predicated upon a "preceding crime," it falls outside his narrow definition of cruelty. It "certainly is cruelty," he writes, but the lack of pretext goes well beyond that. It is "the ultimate insanity," irrational and animalistic. Of the two explanations Seneca considers for what he calls bestiality or savagery, neither is explored in any depth; he simply assumes that non-instrumental transgressive violence must be the result of perverse self-indulgence ("a 'bestiality' that takes pleasure in being savage") or the product of madness. This is all Seneca has to say on the matter, which is itself a curious point that deserves greater attention given his pronounced influence on later assumptions about transgressive violence.

Those who follow in Seneca's line of argument are similarly unable to hazard an explanation for atrocity, in part because they take for granted the irrational nature of the phenomenon itself. In his own inquiry into cruelty, Thomas Aquinas retains Seneca's distinction between rational cruelty on the one hand and irrational bestiality or savagery on the other, but he does so selectively, consciously avoiding any exploration into what the latter concepts entail. "What this limitation amounts to," Baraz notes, "is the rejection of all the irrational elements of cruelty. If the inclusion of cruelty in philosophical discussion represents an expansion in the scope of discourse, this marks the limit."³⁴ The truly irrational actor falls outside the domain of ethics.

³³ Seneca, *Moral and Political Essays*, 161.

³⁴ Daniel Baraz, "Seneca, Ethics, and the Body: The Treatment of Cruelty in Medieval Thought," *The Journal of the History of Ideas* 59, no. 2 (1998): 209.

Such actors, if not literally brutes, are thought to be similarly dominated by emotion and instinct—not reason.³⁵ In this was, atrocity is dismissed as irrational wickedness—barbaric, animalistic, and ultimately mysterious.

Wickedness Without Qualification

The word atrocity derives from the Latin root *atrox*, meaning cruel, heinous, savage, or severe. Under Roman law, atrocity simply described inexcusable acts of violence that were nevertheless performed under orders.³⁶ While it is important to remain aware of shifts in the etymology, my concern here is not with a narrow legalistic definition of atrocity, but with broader attempts to formulate a normative moral and political concept of transgressive violence. While there is no precise equivalent to the concept of atrocity in antiquity, it is usually apparent to the attentive reader when such ideas come up for discussion. It is present, for instance, when Herodotus laments the treatment of Masistes' wife at the hands of Amestris: "she cut off the woman's breasts and threw them to dogs, and her nose and ears and lips likewise, and cut out her tongue, and sent her home thus cruelly used [διαλελυμασμένην]."³⁷ Likewise, Thucydides writes in normative terms when describing the "implacable savagery" of those who, "not actuated by greed," allow themselves to be "carried away by ignorant rage" in the conduct of war.³⁸ To be carried away is not to act but to be acted upon, guided not by reason but by emotion. Atrocity not only taps the irrational passions—those we ostensibly share with animals—it is also completely unnecessary.

³⁵ The common analogy with animals/brutes, including Seneca's own assertions about reverting to an "animal of the forest," resonate with the frequent comparisons of the tyrant to a savage beast of various kinds.

³⁶ See Law 157 in Alan Watson, ed., *The Digest of Justinian*, vol. 4 (Philadelphia: University of Pennsylvania Press, 1998), 480.

³⁷ The key verb is διαλυμαίνωμαι, which bears negative moral connotations. I am grateful to Tristan K. Husby for assistance with this passage.

³⁸ Thucydides, *The Peloponnesian War*, ed. Walter Blanco and Jennifer Tolbert Roberts, trans. Walter Blanco (New York: W.W. Norton, 1998), 131.

This basic explanation of atrocity as non-instrumental extreme violence anticipates the Roman legal concept and will become almost standard in later canonical accounts.

Before Seneca, Aristotle is the only ancient thinker to inquire into the classification and causes of various kinds of transgressive violence in a way that does not simply rely on the facile non-explanations. Aristotle distinguishes ordinary violence from “wickedness” by providing some grisly examples of the latter and naming a familiar Sicilian tyrant.

I mean, for example, the female human who people say rips open pregnant women and devours their babies; or the pleasures of some of the savages that live around the Black Sea, who are alleged to eat raw flesh, or human flesh, or to lend their children to one another to feast upon; or the story of Phalaris.

These states are brutish, but others develop through disease, and in some cases madness, as in the case of the person who sacrificed and ate his mother, or the one who ate the liver of his fellow slave. There are others that arise from diseased states or habit, such as pulling out one’s hair, nibbling one’s nails, or even charcoal or earth, and sodomy too. These occur naturally in some people, and in others from habit, as in the case of those who have been sexually abused since childhood.³⁹

Aristotle is careful to distinguish between “brutish” states [θηριώδεις] and rational states. As in the examples he provides, the former are a result of “nature” (disease, madness) or “habit” (deviant culture). In most cases, it would be unreasonable to hold individuals morally responsible for atrocities committed under the sway of these influences.⁴⁰ Though horrific, their actions remain “beyond the bounds of vice” [ἔξω τῶν ὀρών ἐστὶ τῆς κακίας]⁴¹—akin to the behavior of animals. By contrast, those who remain free of brutish states and yet nevertheless commit appalling acts of violence fall into a completely different moral category. Because those who would perpetrate this kind of violence retain their capacity for reason, Aristotle describes such behavior as wickedness “without qualification” [ἀπλῶς].⁴²

³⁹ Aristotle, *Nicomachean Ethics*, trans. Roger Crisp (New York: Cambridge University Press, 2004), 127–28.

⁴⁰ See also Giles Pearson, “Aristotle on Psychopathology,” in *Evil in Aristotle*, ed. Pavlos Kontos (New York: Cambridge University Press, 2018), 145–48.

⁴¹ Aristotle, *Nicomachean Ethics*, 128.

⁴² Aristotle, 128.

Though it remains an incomplete account, it is unique in the history of political thought for what it seems to suggest about the interaction of reason with transgressive violence. Unlike later canonical discussions, Aristotle essentially concedes that atrocity is not limited to irrational brutes; it can be committed by rational, and therefore political, actors. Those acting on brutish impulses can be terrifying, but a person who is both rational and wicked “can do ten thousand times as much evil as a brute.”⁴³ The latter is ultimately worse, morally speaking, because while those acting under the sway of brutish influences are just as impervious to the moderating influence of moral education, the damage they cause is usually arbitrary and limited. By contrast, wickedness without qualification implies deliberation and a kind of calculating cold-bloodedness that provides much greater scope to monstrous intent. Fortunately, Aristotle seems to regard wickedness without qualification as an exceptionally rare phenomenon. Transgressive violence, particularly of the non-instrumental variety is radically at odds with the good life in ways that should be obvious. Not all “talents” are worthy of promotion. Aristotle does not grapple with such questions, but the presence of rational monsters poses challenges for any theory of politics that takes reason as its foundation. I suspect that this is part of the reason why, with the partial exception of Seneca discussed above, nearly everyone after Aristotle either treats transgressive violence as an extra-political phenomenon or ignores it altogether.

Non-Instrumentality

Attempts to isolate the worst imaginable instances of human behavior frequently rely upon some notion of non-instrumentality. The worst acts are not just wrong, they serve no purpose at all. We seek to understand wrongdoing, to comprehend in some small measure the reasoning

⁴³ Aristotle, *Nicomachean Ethics*, 130.

behind monstrous acts. Whether the reasons ultimately uncovered are good or (more often) bad is less important than that reasons exist. For if the canon abhors violence committed for no *good* reason, violence committed for no reason at all is beyond the pale.

As we have seen, Seneca underscores the sheer pointlessness of Phalaris's spectacular tortures and numerous later accounts repeat this basic intuition. Of course, Seneca also tells us that Phalaris *enjoyed* the suffering he caused, which sets him apart. Other accounts argue that there is something even worse this kind of sadism, namely *to feel nothing at all*. Joseph Butler writes that "the *utmost possible depravity*, which we can in imagination conceive, is that of disinterested cruelty."⁴⁴ This is the moral obverse of disinterested political rule. While a good ruler is expected to keep petty personal biases from influencing his political judgment and certainly in the implementation of punishment, raw cruelty is at least comprehensible if it can be attributed to revenge, sadism, rage, or other passions run wild. Transgression for the sake of transgression is something from a nightmare. Non-instrumental violence is condemned so uniformly in the canon that it usually passes without much elaboration, though it expresses different and often overlapping ideas in the literature. On my interpretation, these ideas can be grouped into two broad and sometimes overlapping categories: (1) non-instrumentality as imprudent excess; and (2) non-instrumentality as perverse self-indulgence.⁴⁵

Imprudent excess refers simply to forms of violence that go too far in some respect. Such excess does always sink to the level of atrocity, of course, but it offers a glimpse into the boundary assumptions of permissible violence. Drawing on his experiences in the Nazi concentration camps,

⁴⁴ Joseph Butler, *Fifteen Sermons and Other Writings on Ethics*, ed. David McNaughton (New York: Oxford University Press, 2017), 13. My emphasis.

⁴⁵ A third pseudo-category should also be mentioned, namely the widespread use of bad faith claims of non-instrumentality. This include the efforts, usually by the representatives of governments, to define the violence of enemy groups as "meaningless" or "senseless" and therefore *a priori* unjustifiable. While this version of non-instrumentality is very common, it does not represent a serious attempt to understand atrocity and we can safely exclude it from consideration here.

Primo Levi writes eloquently of “useless violence,” which he describes as “an end in itself, with the sole purpose of inflicting pain, occasionally having a purpose, yet always redundant, always disproportionate to the purpose itself.”⁴⁶ Recall Seneca’s definition of cruelty as excessive punishment. The contemporary equivalent of this intuition is expressed in the principle of proportionality in the Just War tradition. The physical abuse and killing of women, children, the elderly and infirm, and the defenseless in general, including animals in many cases, is so thoroughly rejected by canonical thinkers that it warrants our attention. “A child,” Seneca tells us, “can be excused [from violence] by his age, a woman by her sex.”⁴⁷ This basic sentiment remains constant even in our own time: however bad we judge an act of violence to be in its own right, it is thought to be much worse when women and children are the victims. The intuitions that lead to the resounding moral proscription undergird the development of normative restraints in the practice of warfare and are the precursors to international humanitarian law.

But why should the target/s of violence matter? Let us consider Thucydides’s description of the sack of Mycalessus.

[T]he Thracians rushed into Mycalessus, looting homes and temples and killing all the people they came across, one after another, sparing neither old nor young. They even killed women and children, even beasts of burden, every living thing they saw. For when they are on a rampage, the Thracian race is the most murderous, on a level with the worst barbarians, and on that day there was every kind of mayhem, and death took every conceivable form. They even burst into the boys school—the biggest in the town—that the boys had just entered, and hacked them all to pieces. This disaster was sudden, horrible—none more so—and it fell upon the whole city.⁴⁸

The passing of more than two millennia has done nothing to soften the horror of this account. At the very least, passages like this one rebut the misleading caricature of the ancient world as a place

⁴⁶ Primo Levi, *The Drowned and the Saved*, trans. Raymond Rosenthal (New York: Vintage Books, 1989), 106.

⁴⁷ Seneca, “On Anger,” in *Moral and Political Essays*, ed. John M. Cooper and J.F. Procopé, trans. John M. Cooper (New York: Cambridge University Press, 2010), 101.

⁴⁸ Thucydides, *The Peloponnesian War*, 285.

of passive and unrelenting cruelty. Clearly, not all forms of violence were morally permissible, even when the underlying moral norms were ignored, as in this case.⁴⁹ Thucydides clearly views the massacre as a stark departure from morally responsible conduct in war. Judith Shklar believes the episode offends him (and his contemporary readers) so profoundly not because the act of killing women, children, and animals is excessive, but because it is *cowardly*. Dismembering schoolboys and wantonly slaughtering animals presents no physical threat to the killers and this upsets us. “Without the courage required to overcome the fear of genuine dangers such as those that men face in battle, cruelty is unmitigated by any compensating virtue.”⁵⁰ But cowardice is not enough to explain the special status of women, children, the aged, and infirm if only because cowardly acts are not always atrocious or even cruel. Something else is needed, namely non-instrumentality. Cowardly acts are atrocious *when they are also unnecessary*.⁵¹

Conquering armies in antiquity and throughout the Middle Ages commonly reserved the right to plunder and rapine. Roman accounts uphold this right, including the rape of women and the enslavement of conquered populations. Though it shocks contemporary sensibilities, slavery was generally regarded as a more merciful outcome than death. Still, there are limits. Once the battle is won, it is strategically superfluous and often counterproductive to slaughter survivors in cold blood or raze the city to the ground. Xenophon warns that excessive plunder has “overturned the fortune of many who have conquered”⁵² and numerous Roman historians echo his concerns. Before the laws of war coalesced into a recognizable set of norms, informal practices dictated by a sense of *necessity* governed the use of military force. Grotius takes non-instrumentality as a

⁴⁹ See also Josiah Ober, “Classical Greek Times,” in *The Laws of War: Constraints on Warfare in the Western World*, ed. George J. Andreopoulos and Mark Schulman (New Haven, CT: Yale University Press, 1994), 12–26.

⁵⁰ Judith N. Shklar, *Ordinary Vices* (Cambridge, MA: The Belknap Press of Harvard University Press, 1985), 25.

⁵¹ It goes without saying that not every instrumental act is a necessary act, which is why perpetrators of violence tend to defend their behavior on the basis of necessity.

⁵² Xenophon, *The Education of Cyrus*, trans. Wayne Ambler (Ithaca, NY: Cornell University Press, 2001), 121.

starting point for thinking about the permissibility of violence in the conduct of war and proscribes the killing of women, children, and men “whose Manner of Life is wholly averse to Arms,”⁵³ namely priests and scholars. Though he is popularly perceived as an advocate for dispassionate ruthlessness in politics, Machiavelli’s assessment of Agathocles explicitly condemns cruelty when it serves no purpose.

The special concern for women and children that attends every discussion of war, even today, ultimately stems from the assumption that such targets are defenseless and therefore innocent. The fourth Geneva Convention protects “children, women, old people, the wounded and the sick” on the explicit assumption that these groups “take no part in the fighting.” The taking of innocent life is a profound taboo in most, if not all, of the world’s major moral and religious systems. This deep offense arises from the suspicion that such killings are never instrumental and thus always unnecessary. Killing innocents also happens to be cowardly, but that is not what makes it atrocious. Shklar’s suspicions about cruelty are more accurate when she observes that “The usual excuse for our most unspeakable acts is that they are *necessary*.”⁵⁴ In other words, the perpetrators of violence often claim that their behavior is necessary for this or that reason precisely to avoid the appearance of non-instrumentality.

The second broad expression of non-instrumentality arises almost as frequently as imprudent excess and can be described as perverse self-indulgence. Like Aristotle’s examples of brutish states and Seneca’s description of Phalaris, the canon abounds in a lurid fascination with uniquely disturbed figures who apparently enjoy the suffering they cause. Montaigne’s formulation is representative of perverse self-indulgence as an expression of non-instrumentality:

I could hardly persuade myself, before I had actual evidence, that there exist any souls so unnatural as to commit murder for the mere pleasure of doing so; as to hack and chop off

⁵³ Hugo Grotius, *The Rights of War and Peace*, ed. Richard Tuck, vol. 3 (Indianapolis, IN: Liberty Fund, 2005), 1443.

⁵⁴ Shklar, *Ordinary Vices*, 30. My emphasis.

men's limbs, as to sharpen their wits for the invention of unusual tortures and new forms of death; *and all this without enmity or gain*, but merely for the enjoyment of the pleasing spectacle afforded by the pitiful gestures and motions, the lamentable groans and cries, of a man dying in anguish.⁵⁵

Shaftesbury formulates a similar version of this objection worth considering in tandem:

Of this kind is that unnatural and inhuman delight in beholding torments and in viewing distress, calamity, blood, massacre and destruction with a peculiar joy and pleasure. ... To see the sufferance of an enemy with cruel delight may proceed from the height of anger, revenge, fear and other extended self-passions, but to delight in the torture and pain of other creatures indifferently, natives or foreigners, of our own or of another species, kindred or no kindred, known or unknown, to feed as it were on death and be entertained with dying agonies – *this has nothing in it accountable in the way of self-interest or private good*, above-mentioned, but is wholly and absolutely unnatural as it is horrid and miserable.⁵⁶

Both formulations center on non-instrumentality. As with Augustine and the pears, wrongdoing of this kind might be regarded instrumental in a very limited sense, perhaps only insofar as it seeks *enjoyment* in the act of transgression for its own sake. For all it does beyond this limited goal, however, it may as well be strictly non-instrumental—and so, examples of perverse self-indulgence are typically characterized as equally irrational and extra-political. Like the myth of diabolical evil, perverse self-indulgence centers on the affective qualities of violent agents rather than the form of violence itself. Determining whether or not a violent agent derives pleasure from their behavior poses obvious practical problems. This is why, except for cases in which sadism is taken for granted (Phalaris, Nero), the canonical concern with perverse self-indulgence usually serves as more of a warning against individual vice than a diagnostic tool for assessing instances of actual violence.

Discussions that center on cruelty to animals are revealing in this regard. The special aversion to killing women and children discussed above takes a slightly different form when the

⁵⁵ Michel de Montaigne, "On Cruelty," in *Essays*, ed. J.M. Cohen (New York: Penguin, 1993), 186. My emphasis.

⁵⁶ Shaftesbury, *Characteristics of Men, Manners, Opinions, Times*, ed. Lawrence E. Klein (New York: Cambridge University Press, 1999), 264. My emphasis.

assumption of defenselessness extends to animals. Human societies have always hunted or raised animals for slaughter but in the act of killing a fellow living creature, some have seen the potential for moral corruption in humans. Montaigne worries that those who are “bloodthirsty towards animals show a native propensity towards cruelty.”⁵⁷ In this way, the concern with animals usually focuses not on cowardice but on the importance of not deriving pleasure from slaughter. Maimonides writes that while we must eat animals for basic nourishment, cruelty is to be avoided. Animals should be slaughtered quickly and without unnecessary suffering. Furthermore, no creature should be killed in view of its mother: “For in these cases animals feel very great pain, *there being no difference regarding this pain between man and the other animals.*”⁵⁸ In a radical move that would not be altogether out of place in contemporary discussions of animal rights, Maimonides argues further that, “[t]he love and the tenderness of a mother for her child is not consequent upon reason, but upon the activity of the imaginative faculty, which is found in most animals just as it is found in man.”⁵⁹ The essential point is that one must not enjoy the experience of slaughter, however necessary for human flourishing. Those who derive pleasure from killing God’s lesser creation are morally related to those who derive pleasure from killing God’s greater creation.

The belief that slaughtering animals is somehow connected to the human capacity for cruelty occurs in many different contexts. Kant argues as much, though not out of any concern for animal welfare. In Thomas More’s *Utopia*, abattoirs are located beyond the city walls and staffed by slaves so that the Utopians themselves will not suffer the inherently dehumanizing

⁵⁷ de Montaigne, “On Cruelty,” 187.

⁵⁸ Moses Maimonides, *The Guide of the Perplexed*, trans. Shlomo Pines, vol. 2 (Chicago: University of Chicago Press, 1963), 599.

⁵⁹ Maimonides, 2:599. My emphasis.

consequences of slaughtering animals.⁶⁰ Hunting in Utopia is shunned as the “vilest form of butchery”⁶¹ because it encourages a sense of pleasure in the kill and thereby tends to harden human hearts. While the abattoir is at least necessary for providing nourishment, “the hunter is only after pleasure when he kills some poor little creature and butchers it.”⁶² The belief that necessity alone, not pleasure, justifies hunting again returns us obsession with instrumentality. Such a concern appears in many different cultural and historical contexts. Describing the wanton slaughter of the once vast bison herds of North America, Black Elk observes that while some whites kill for money, others seemed simply to enjoy it.

The Wasichus did not kill them to eat; they killed them for the metal that makes them crazy, and they took only the hides to sell. Sometimes they did not even take the hides, only the tongues; ... You can see that the men who did this were crazy. Sometimes they did not even take the tongues; they just killed and killed because *they liked to do that*.⁶³

Who could enjoy such a thing? The fine line dividing acceptable slaughter from unacceptable sadism also bothered Montaigne. “[H]ere my weakness extends so far that I cannot see a chicken’s neck twisted without distress, or bear to hear the squealing of a hare in my hounds’ jaws, though hunting is a very great pleasure to me.” Finally, Mandeville’s *Fable of the Bees* includes a curious passage in which a lion, that paragon of bestial cruelty, chastises “mischievous man” for a cruelty worse than his own: killing for its own sake.

Savage I am, but no Creature can be call’d cruel but what either by Malice or Insensibility extinguishes his natural Pity: The Lion was born without Compassion; we follow the Instinct of our Nature; the Gods have appointed us to live upon the Waste and Spoil of other Animals, and as long as we can meet with dead ones, we never hunt after the Living. ’Tis only Man, mischievous Man, that can make Death a Sport.

The lion acts on necessity. Humans do it for kicks.

⁶⁰ Thomas More, *Utopia*, trans. David Wootton (Indianapolis, IN: Hackett, 1999), 104.

⁶¹ More, 120.

⁶² More, 120.

⁶³ Black Elk and John Neihardt, *Black Elk Speaks* (Lincoln, NE: University of Nebraska Press, 1961), 217.

Act & Context

“[A]trocity,” Foucault observes, “is a characteristic of some of the great crimes.”⁶⁴ While his idiosyncratic use of the term “atrocity” in *Discipline and Punish* is not directly analogous to my own, there are some useful points of contact nonetheless, notably the insistence that atrocity mocks many—if not all—laws, human and divine.

[Atrocity] refers to the number of natural or positive, divine or human laws that they attack, to the scandalous openness or, on the contrary, to the secret cunning with which they have been committed, to the rank and status of those who are their authors and victims, to the disorder that they presuppose or bring with them, to the horror they arouse.⁶⁵

In this way, any act of violence would seem to contain at least two components: (1) the act itself and (2) the array of norms possibly threatened by it. To the extent that some manifestations of violence have been rendered socially acceptable under specific circumstances (e.g. warfare, policing), we have learned to rationalize (1) the act in accordance with (2) its specific context and social meaning. When it is at least minimally restrained, the question of violence has a curious ability to make utilitarians of us all. We anxiously tally means and ends in an effort to assess the permissibility of violence *in this case*. The most immediate questions, of course, pertain to perpetrators and victims: who is committing violence against whom? Beyond this, there is an endless stream of ancillary questions we might ask about the circumstances in which violence occurs: Is the violence direct or is it structural? Is it on a large or comparatively modest scale? Is it deserved or undeserved (and how do we determine this)? Does it appear to violate formal law, including international legal standards like the Fourth Geneva Convention or the Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG)? Whatever questions we ask,

⁶⁴ Foucault, *Discipline and Punish*, 55.

⁶⁵ Foucault, 55.

they will generally seek to clarify the precise relationship between (1) the act itself and (2) its social context, which remain conceptually distinct. As long as we are able to sustain the mental separation of act and context, moreover, we tacitly refuse to surrender the belief that while some forms of violence may be acceptable under some circumstances, they are unacceptable under others.

Atrocity collapses these categories. It goes beyond conventional violence in that *it precludes the very possibility of justification*. A utilitarian calculus has no place in the consideration of atrocity if only because there is no conceivable context in which such acts might be “acceptable.” To recognize an atrocity is to simultaneously recognize its absolute transgression; the two formerly distinct concepts—act and context—become inextricable, eclipsed by the moral enormity of an ever-increasing pile of corpses. From this, it follows that there cannot be any context for which an atrocity is permissible. Certainly it does not render Auschwitz any less horrifying to learn that some of those involved in the atrocities drank to excess as a method of coping with a task they did not enjoy.⁶⁶

In her attempts to defend a concept of “evil,” Claudia Card use atrocities as paradigmatic examples. Whatever “atrocities really are,” she writes, “that is what evil really is.”⁶⁷ For Card, atrocities are “unmitigated by any morally good reason.”⁶⁸ Expressions of this intuition are evident in everyday language. Atrocity stories speak for themselves—or so we like to think. That atrocity is so often described as unspeakable, unimaginable, or incomprehensible is likely a way of

⁶⁶ Edward B. Westermann, “Stone-Cold Killers or Drunk with Murder? Alcohol and Atrocity during the Holocaust,” *Holocaust and Genocide Studies* 30, no. 1 (April 2016): 1–19.

⁶⁷ Claudia Card, *Confronting Evils: Terrorism, Torture, Genocide* (New York: Cambridge University Press, 2010), 15.

⁶⁸ Card, 17.

acknowledging the inextricability of act and context. No extrapolation is necessary. “Is” does imply an “ought” not, an “ought” never.

Attitudes change, customs evolve, and forms of violence that were once regarded as “normal” are today condemned. If atrocity is absolutely impermissible, it is fair to ask: impermissible when and to whom? If atrocity flattens the distinction between act and context, the task for political theory, it seems to me, is to scrutinize the rationalizing impulses that serve to sustain that distinction when it comes to forms of violence that we tacitly support under some circumstances. Until we abolish the mental chasm between act and context, the latter looms much too large. We tolerate forms of violence against official enemies and other groups, which, if directed at ourselves, we would call atrocious. Canonical texts fall short because they have also relied too heavily on context. This act of violence is unacceptable... *when* it targets the innocent... *when* it exceeds necessity... *when, when when*... The “whens” that govern the moral permissibility of violence are potentially infinite, as are the means of accommodating such standards as they evolve over time. In Eichmann’s chilling words, “We did our best to make everything somehow palatable.”⁶⁹

It is important to reiterate that in attempting to make some sense of how atrocity has been treated by political theory, I have not attempted to produce a definition of atrocity. Such a formulaic accounting of permissible and impermissible acts is neither possible nor desirable. What is much more interesting is how these categories are shaped. As I have tried to show, canonical thinkers have treated the worst imaginable forms of violence as *extra-political*, aberrant phenomena akin to crime. The assumption seems to be that nothing in atrocity bears on the

⁶⁹ Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 2006), 124.

properly political sphere. At best, atrocity is a warning: a gruesome example of what we should collectively avoid and take measures to prevent. It is pre-political savagery.

Faced with horrific violence in an uncertain world, political theorists have often sought refuge behind walls, both literal and figurative, that establish a clear division between the properly political life and barbarism. History is not reassuring in this regard. The record of indiscriminate killings, mutilations, innovative tortures, and all manner of appalling cruelties is utterly mind-boggling and threatens to overwhelm our analytical sensibilities. We throw up our hands and conclude that humans are hopelessly vicious creatures, liable to act upon every malign impulse in the absence of a power capable of thwarting their bloodlust. We insist upon a comforting tautology: atrocity is extra-political and properly political violence is not atrocious. Yet in defining atrocity as absolutely-not-self, the canon fails to recognize the ways in which the very foundations of politics are made possible by transgressive violence, past and present. The difference, of course, is that we do not call this sort of thing atrocity, because we do not recognize it as such. The “whens” sustain an artificial separation between act and context in which the latter predominates.

The attempt to cordon off certain forms of violence as atrocious and therefore extra-political will remain unconvincing so long it assumes that atrocity is always spectacular and easily identifiable.⁷⁰ Of course, atrocity is sometimes spectacular and it is sometimes easy to recognize (this explains why the genocides of the 20th century are the most commonly invoked examples). But it is of arguably greater urgency to examine forms of violence that we are unaccustomed to thinking about as atrocity. If the foregoing discussion suggests anything tangible about atrocity, it is that such concepts are fluid. We think we know atrocity when we see it, but because the premises

⁷⁰ By emphasizing the affective experience of victims and bystanders, Cavarero takes it for granted that atrocities are recognizable. Adriana Cavarero, *Horrorism: Naming Contemporary Violence*, trans. William McCuaig (New York: Columbia University Press, 2011).

that guide these intuitions are themselves political, atrocity itself is always a political designation. Atrocity reflects, in negative form, the implicit assumptions of the politics from which it springs.

The elasticity of social constructs is a familiar idea. Whether our subject of inquiry is madness, morals, the working day, or atrocity, politics and history collaborate to shape the meanings of what we take to be commonplace notions. The division between permissible and impermissible forms of violence tell a story about the foundational prejudices and implicit assumptions of politics itself. Our standards of atrocity are surely different in some ways from those of the Middle Ages, but they are similar in more fundamental ways. The best political theory can do is attempt to understand the process and bring its insights to bear on forms of violence that go unnoticed and ignored.