

Civil Death in Early Modern England

Ross Lerner

Occidental College

ABSTRACT

The article explores the

criminals as beasts with which all (reasonable) humans are at war. The racialized assumptions of this representation can be seen both in Locke's own support of colonialism and slavery and in the influence Locke would have on the English jurist William Blackstone, who (in an era that increasingly racialized black people) updates Locke's theory of the

is the agent of his bondage; the law, "in its humanity," can take away the humanity of the prisoner. This translates to a kind of slavery a decade after Emancipation: bondage not to a private master but to the state itself. (Slavery as punishment remains as a possibility enshrined in the thirteenth amendment of the US Constitution, signed into existence only a few years

The use of the concept to theorize guilt and punishment in early modern England has been largely neglected, with one significant exception. Molly Murray, in her illuminating study of habeas corpus in seventeenth-century England, uncovers an important reference to civil death in a 1628 Parliamentary proceeding, where MP William Hakewill claims that arbitrary imprisonment is "civil death"

So one that lives naturally, may bee dead civilly; so one that is under the subjection and power of another, such a one is dead civilly. The civill Law accounts any one that is under subjection to be *Civiliter mortuus* as they speake; that is, he is in that sence not accounted among living men, hee is one dead, because hee is not animated, and acted by his owne will, but by the will of him that rules him: *so reckon yee your selves dead*, saith the

sermon thus provocatively conflates

racialization of civil death is already incubating here). Civil death shrouds itself within the myth that it simply names or matches a prior condition.

Thr noikos's equivocation over the temporality of civil death is further complicated by the solution it proposes to being dead in and ruled by sin: making sin itself civilly dead — not so that the sinner can

doctrine of civil death. Murray has recently suggested in passing that civil death might be a useful metaphor to explain Samson's sense of himself as a "moving grave," and the more specific, twofold understanding of civil death that I have enumerated — encompassing both death in sin and death to sin — enables a more extended analysis of civil death's significance for *Samson Agonistes* (Murray 2014, 159).

"Living death" makes its first literary appearance in Milton after the fall in *Paradise*

for the Philistines, and Samson sits in prison reflecting on his past and his current

These rousing motions have been the subject of much debate. Stanley Fish famously claims this as the moment Samson “ceases to *be* a self,” insofar as his will is seemingly emptied

1639). Other readings insist on the impossibility of

understand the various modes of unmaking that the early modern world inflicted on certain persons and communities. We might also find ways to write a new history not only of early modern personhood but also of the forms of resistance against the world that civil death has a part in building.

Caleb Smith's illuminating account of civil death in the nineteenth-century United States concludes with an analysis of Melville's *Bartleby*, where he sees Bartleby's ghostly, passive resistance (stating he would "prefer not to" straight to his death in *The Tombs*) as a haunting, "cadaverous triumph" over the sentimentalism that brought the modern penitentiary's reformist vision into the world (Smith 2011, 71–2, 77). Samson is an extremely complicated model for political revolt, of course, but his civil death also offers something very different from what we find in Smith's reanimation of Bartleby's ghost. Milton's Samson depicts the possibility that early modern civil death might produce radically violent revolt akin to what Walter Benjamin called divine, law-destroying violence, rooted neither in autonomy and strength nor in ghostly passivity (Benjamin 1999). Looking to the recent past and present, we can see how revolutionaries from the Black Panther Huey Newton's "revolutionary suicide" to the Zapatista Army of National Liberation's theory of "Dying to Live" have recast for their own revolutions the divine, law-destroying violence that the doctrine of civil death can call forth (Newton 2003; Marcos 2001, 17). The Zapatistas refuse to resign themselves to preferring not to participate in the state's oppressive legal system, which would mean being folded into the civil death that incarceration and structural impoverishment alike look to institute or confirm. Instead, as the writings of Zapatista spokesperson Subcomandante Marcos show, these Indigenous "resistants" call on a history of what we might name unanimated revolt to refuse the state's legal violence and have led, for twenty-five years, an ongoing antiracist, communitarian uprising in Chiapas, Mexico that dispels fantasies of liberal free will and offers new possibilities for collective politics: "'Dying to Live' says 'enough' to the life of death — death from curable diseases, from poverty — accepting in its place the death in life of a resistant" (Marcos 2001, 17).²¹ My suggestion that we hear an echo of civil death's ambiguous effects in this supplanting of "the life of death" with "the death in life of a resistant" is not meant to assert that every political martyrdom or instance of revolutionary violence activates the equivocal concept of civil death. But I do contend that turning back to civil death's complex medieval and early modern origins in theological, legal, and literary discourses might allow us to hear surprising resonances between very different struggles against the forces that make life unlivable for so many communities across the globe today.

Notes

1. On how a racialized idea of "taint" came to be related to "attainder," see Dayan (2011, 48–9). On Locke's support for "the organization of slavery along racial lines," see Bernasconi and Maaza Mann (2005). On Locke and "racial liberalism," see Mills (2008).
2. Borgmann's genealogy offers a reconstruction of some of the earliest uses of the term in the eleventh through thirteenth centuries, then skips over the early modern period to revolutionary France. The association of civil death with banishment remains in the early modern period. See, for instance the anonymous *The Preceptes of Cato* from 1553: "a banished man whiche hath no where dwelling place, is like one that is dead and unburied and lieth without a cophine or graue For banishment is a ciuill death" (sig. R2 r).

19. Lupton (2005) is one of the few early modernists working on political theology to appreciate and explore this essential insight from Walter Benjamin and Giorgio Agamben (especially 164–5; see also Benjamin 2006, 392; Agamben 2005, 88). The doctrine of civil death may seem conceptually to overlap with Agamben's genealogy of *homo sacer*,

Bernasconi Robert, and Anika Maaza Mann. 2005. "The Contradictions of Racism: Locke, Slavery, and the *Two Treatises*." In *Race and Racism in Modern Philosophy*, edited by Andrew Valls, 89–107. Ithaca: Cornell University Press.

Black's Law Dictionary, 11th Edition 2019.

Blackstone, William. 1769. *Commentaries on the Laws of England*. Oxford: Clarendon.

Blount, Thomas. 1670. - [Nomo-lexikon], a Law Dictionary: Interpreting Such Di cult and Obscure Words and Terms As

Mohamed, Feisal. 2020. *Sovereignty: Seventeenth-Century England and the Making of the Modern Political Imaginary*. Oxford: Oxford University Press.

Montagu, Walter. 1648. *Miscellanea spiritualia: or, Devout essaies*. London. Early English Books Online.

Muhammad, Khalil Gibran. 2011. *The Condemnation of Blackness*: