

Capital Punishment as a Response to Evil

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Abstract Some jurisdictions acknowledge, as a matter of positive law, the relevance of evil to capital punishment. At one point, the state of Florida counted that the fact that a murderer's crime was "especially wicked, evil, atrocious or cruel" as an aggravating factor for purposes of capital sentencing. I submit that Florida may be onto something. I consider a thesis about capital punishment that strikes me as plausible on its face: if capital punishment is ever morally permissible, *it is permissible as a response to evil*. Call this the *Punishment as a Response to Evil* thesis, or PRE. If capital punishment is not morally permissible as a response to evil, then, according to PRE, it is not morally permissible, period. PRE admits of at least two different readings: on the first, if capital punishment is ever morally justified it is justified as a punishment for evil *crimes*; on the second, if capital punishment is ever morally justified it is justified as a punishment for evil *people*. While this first version of PRE has found advocates in both philosophy and forensic psychiatry, I argue against this first reading of PRE and for the second. To secure this conclusion I appeal to an account of evil and evil personhood that I have developed elsewhere.

Keywords Capital punishment · Death penalty · Evil · Depravity scale · Aggravation

Some jurisdictions acknowledge, as a matter of positive law, the relevance of evil to capital punishment. At one point, the state of Florida counted that the fact that a murderer's crime was "especially wicked, evil, atrocious or cruel" as an aggravating factor for purposes of capital sentencing.¹ However, in *Espinosa v. Florida*, the Supreme Court of the United States (SCOTUS) determined that 'evil crime' is so vague that no jury could make a

¹ Fla. Stat. § 921.141(5)(h)(1991) allowed that a jury is entitled to find as an aggravating factor that the capital crime was "especially wicked, evil, atrocious or cruel."

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