

## The Dawn of the Seminar

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Why dawn? Why is or was the death penalty carried out customarily at dawn? Why, for example, was the firing squad assembled at dawn to shoot deserters from the British, French or German armies during WWI? The memorial to the more than 300 soldiers summarily executed by the British command, which is far more than by any other of the combatant forces during that war, this memorial is even called the “Shot at Dawn Memorial.” In France, at least since 1939 when Eugène Weidmann was executed (the last public execution in France), the death sentence was always carried out at dawn (see Badinter, *L'Exécution*). One of the sources I read claims that Weidmann’s execution was the last to be held in the open, in public, at dawn precisely because it was delayed beyond dawn for some reason, which meant that there was enough light for photographers to immortalize the moment, so to speak. (Perhaps it was even one of these photographs that Derrida saw reproduced in the Algerian press during his boyhood, as he recounts in Session 1.) This technical reproducibility is supposed to have shocked sensibilities and displeased authorities, who decreed the banishment thereafter of the guillotine from public space.

This curious circumstance hints at conditions on the condition of visibility that, as Derrida insists, is necessarily inscribed in the law of the death penalty. In the modern era, at least, this visibility is elaborately restricted, confined within a small circle of eye witnesses. The scene must be lighted, to be sure, but it is no longer by the natural light of dawn, except perhaps for those summary battlefield executions by firing squad. Dawn has nevertheless left its mark on this “propre de l’homme” or “le propre de Dieu” that is the death penalty.

Without interrogating it as such, Derrida deploys this symbolic marker all across the first session of the 1999-2000 seminar on the death penalty. He thus sets a stage where dawn raises the curtain on the theater of capital punishment. Dawn, which is to say the beginning; dawn, which is to say, the end. Not yet day, still somewhat night, dawn marks the liminal space into which a decision cuts—*tranche*.

Throughout the first session—session 1 and 1 (cont)—this figure of dawn is evoked regularly, but always so as to hold it off, defer its arrival, so as to begin before this beginning that is an end. “Before beginning, let us begin. We would begin. We would begin by pretending to begin before the beginning. As if, already, we wanted to delay the end . . .” (3). This delay, or this proto-beginning, lasts until p. 51 (42), after a last long quotation from Genet: “Now, we begin.” In this first portion of the seminar, at least, the part we’ll be reading this week, the figure of dawn recurs only once more, in Badinter’s narrative in Session 2, (84, 70-71), where Badinter speaks eloquently and not without pathos of the “jurors of Dawn,” capital D, “les jurés de l’Aube.”

It seems to me that other motifs are crossing in this figure of dawn as Derrida deploys it and relies on it to provide the initial élan for the two-year seminar. In addition to marking the decided time of execution, dawn can signify as well the beginning of enlightenment, the spreading light of abolitionist reason. The modern abolitionist movement got its start as a project of enlightenment—with Beccaria, Voltaire, and later framers of the first French Republic, who issued a promise to abolish capital punishment once peace would have been declared. The figure of dawn can economically situate, then, both the persistent enforcement of capital punishment, and enlightened discourse against the barbarity of that practice. As it advances, Derrida’s analysis is going to work to deconstruct this apparent opposition, this pro et

contra confrontation between proponents and opponents, getting the most traction in the abolitionist writings of V. Hugo, for the contra camp, and a brief passage in Kant's "Doctrine of Right" in *The Metaphysics of Morals*, for the pro-death penalty position. (Apropos deferral, there is a curious delay in Derrida's reading of the argument, which is made, he says, par excellence by Kant, that "access to the death penalty is an access to the dignity of human reason, and the dignity of a man who, unlike beasts, is a subject of the law who raises himself above natural life. That is why, in this logic . . . the death penalty marks the access to what is proper to man and to the dignity of reason or of human *logos* and *nomos*" [13, 11]. It seems it is only in the 11<sup>th</sup> and last session of the first year that Derrida quotes in full the passage in question from "The Doctrine of Right" in *The Metaphysics of Morals*. This does not prevent frequent reference to and paraphrase of Kant's doctrine, which is repeatedly invoked as a kind of touchstone of the logic upholding in effect the dignity of the death penalty. What this points up, I think, is the way in which the seminar sessions each week follow a scent, *le flair*, without overmuch calculation. There are countless indications of this.)

So, I was saying, the same figure of dawn brings together the immemorial scene of the execution of the death penalty with the dawning light of abolitionist opposition to the cruelty and irreversibility of that act. Because it is the first session of the year's seminar, on a new topic, the figure also supplies the overarching sense of beginning, opening, starting out. It thus introduces the question of the dawning of that about which one is just beginning to speak here: the death penalty. Even before Derrida takes up the account in Exodus of the ten commandments and the penal "judgments" that accompany them, when he is still playing out the figural thread of dawn, the passing phrase "l'aube des religions" (9, 10) signals that the birth or

invention of the death penalty will be interrogated where it crosses with the dawn of “religion,” at least in the Abrahamic tradition.

In his parsing of Exodus 20 and 21, it is this moment of invention of the death penalty that Derrida’s reading particularly singles out, with the kind of irreverent flash of insight that sets this reading clearly apart from any standard of Biblical exegesis. The insight flashes—in English one might say it dawns on him—when he is backtracking after a first quick read through selected passages of Exodus, following Chouraqui’s translation with its distinction of murder or assassination from a death that is decided, prescribed, decreed, imposed by judgment, God’s or man’s. The logic of this distinction, he writes p. 17 (20), this “divine logic will be, moreover, the very one that inspires sometimes literally the most canonical philosophical discourses in favor of the death penalty.” Grotius, Hobbes, Locke are cited, then Rousseau, whose text almost never fails to call up Derrida’s closest attention, as he shows here by examining the details of a passage from the chapter “Du droit de vie et de mort” in *Du Contract social*. Then returning to his list, in rapid succession he names Diderot and Montesquieu. On the other side of the ledger, that of the abolitionists, Beccaria and Voltaire, of course, but also Jefferson, Thomas Paine (Paine’s abolitionism, no doubt, would have explicitly defied Biblical tradition, perhaps the only Enlightenment abolitionist who did so, for Paine was a resolute anti-religionist, if not an atheist), Lafayette, “and even Robespierre.”

It is after this quick inventory that Derrida returns to the biblical passage, specifically to Exodus 20: 18-22, which marks the transition between the delivery of the ten commandments and the delivery of the judgments. What he remarks here seems, then, just a sidelight on the main event, on the fireworks of God’s revelation to Moses, from which the people, the children of Israel draw back in dread. Derrida not

only paraphrases the passage before he quotes it, he inserts extensive comments in the quotation, and then, with one of the few *didascalias* that punctuates this session and this session alone if I'm not mistaken, he signals a dramatic moment of silence after the quotation, as if to let something sink in or else as to allow what the French call a moment of "recueillement," a moment to remember the dead. I'll quote from the paraphrase, which formulates a series of "as if" propositions:

I note as well that in this same passage from Exodus, right after the Ten Commandments and before the "Judgments," there was that striking moment, you remember it no doubt, which is highly revealing, when the people, the children of Israel, having heard the Ten Commandments but not yet the "judgments," want to hear no more. They do not want to hear God any more. At least they do not want to lend an ear directly to the divine speech, they do not want to listen to God any longer, as if they were expecting the worst, which also awaited them, in fact, and they ask Moses to talk with them, because they will listen to Moses, whereas the word of God, if they hear it directly, without intermediary, risks bringing about their death, of putting them to death. As if (you are going to hear the text in a moment), as if, when God has just told them, among other commandments, "thou shalt not kill," but before he draws its legal and in a certain way jurisprudential consequence, that whoever kills will die, that whoever murders will be punished by death, as if God risked bringing about their death with his own voice, just after having told them "thou shalt not kill." As if the children of Israel felt, had the presentiment that the voice of God carried a sinister message, announced the news of death, the threat of death, of the death penalty, at the very moment in which he has just prohibited killing. It is the same law, the ethical law, "thou shalt not kill," that commands the juridical, or penal, law, the death penalty for the criminal who transgresses the ethical law. They have the presentiment that God is on the verge of inventing not killing but the death penalty—and the Jews, the children of Israel, are terrified by this divine word that elects them, that chooses them by uttering in their direction, addressing them, by getting ready to utter the first threat of the first death penalty in the world, on man's earth. This transition, this trance that then seizes hold of the children of Israel is extraordinary. They see the death penalty coming, they see it coming from God. (25-26)

Advancing carefully behind the shield of these as if's, which the commentary accumulates, Derrida finally drops the speculative mode and affirms: "They have the presentiment that God is on the verge of inventing not killing but the death penalty. . . . They see the death penalty coming, they see it coming from God." For, indeed, who

else but God could have invented such a thing in the closest proximity to the proscription on putting another to death, by whatever name one calls it? To this incredible invention, then, can be traced the “dawning” of both pro- and contra-death penalty traditions. In Derrida’s no less inventive reading, scripture would have registered or received this invention in an extraordinary trance or transition—as if the inscription were still reeling from the effect it registers. This trance-like state is marked by what Derrida calls a “presentiment”—a forbidding forewarning that God is about to pronounce the sentence of death. What this reading brings out that is indeed extraordinary is, then, the overlapping of two scenes, the scene of God’s revelation to Moses, the law-giver, and the scene of pronouncing sentence, as if the whole tribe assembled at the base of the Mount Sinai were standing before the judge in a capital case awaiting sentence. The death penalty doesn’t exist yet, it has yet to be invented, and yet its application is already to be dreaded.

This impossible time of the “not yet/already” is the time out of time of dawn, of twilight, *aube*, which is often also called *crépuscule* (the Littré calls this an “abuse” but notes its frequency), which is from the Latin *creperus*: doubtful, uncertain. It is, I will venture to say, the light or the time of the trace, that is, of a past that has never been present, never presented itself as such in the present. Hence the extraordinary presentiment whose traces Derrida aligns in his reading of the allegory or myth of the invention of the death penalty.

I should stop here, for the sake of time, but I’m tempted to continue just a little further, to carry over Derrida’s reading of the strange, dawning presentiment to episodes preceding the pronouncement of the Ten Commandments, in Exodus 19: 9-21, which if I can read them at all correctly, indicate that God had indeed pronounced

the death penalty before instituting it in the “judgments.” Here is the King James version:

<sup>9</sup>And the LORD said unto Moses, Lo, I come unto thee in a thick cloud, that the people may hear when I speak with thee, and believe thee for ever. And Moses told the words of the people unto the LORD.

<sup>10</sup>And the LORD said unto Moses, Go unto the people, and sanctify them to day and to morrow, and let them wash their clothes,

<sup>11</sup>And be ready against the third day: for the third day the LORD will come down in the sight of all the people upon mount Sinai.

<sup>12</sup>And thou shalt set bounds unto the people round about, saying, Take heed to yourselves, that ye go not up into the mount, or touch the border of it: whosoever toucheth the mount shall be surely put to death:

<sup>13</sup>There shall not an hand touch it, but he shall surely be stoned, or shot through; whether it be beast or man, it shall not live: when the trumpet soundeth long, they shall come up to the mount.

<sup>14</sup>And Moses went down from the mount unto the people, and sanctified the people; and they washed their clothes.

<sup>15</sup>And he said unto the people, Be ready against the third day: come not at your wives. [Here the New International Version has instead: “Abstain from sexual relations,” which I suppose has the advantage not only of more currency today, but of allowing us to imagine that Moses was speaking to the people in general, women included, and not only to the “sons” of Israel. A nice example of translation as political correction, but no doubt philologically and therefore historically very dubious. [Check Chouraqui]

<sup>16</sup>And it came to pass on the third day in the morning, that there were thunders and lightnings, and a thick cloud upon the mount, and the voice of the trumpet exceeding loud; so that all the people that was in the camp trembled.

<sup>17</sup>And Moses brought forth the people out of the camp to meet with God; and they stood at the nether part of the mount.

<sup>18</sup>And mount Sinai was altogether on a smoke, because the LORD descended upon it in fire: and the smoke thereof ascended as the smoke of a furnace, and the whole mount quaked greatly.

<sup>19</sup>And when the voice of the trumpet sounded long, and waxed louder and louder, Moses spake, and God answered him by a voice.

<sup>20</sup>And the LORD came down upon mount Sinai, on the top of the mount: and the LORD called Moses up to the top of the mount; and Moses went up.

<sup>21</sup>And the LORD said unto Moses, Go down, charge the people, lest they break through unto the LORD to gaze, and many of them perish.

Verse 12 reads “Whosoever toucheth the mount shall be surely put to death”—every English version I consulted kept this wording: “shall be surely put to death.” Whereas in v. 21, God warns that many people will “perish” if they look at the Lord, or the mountain. Here, again, the versions agree: not “shall be surely put to death,” but “perish”—which could describe a so-called “natural death.” But “surely be put to death” is the same language as in the “judgments” to be pronounced only later, in book 21. So Moses’s God installed the death penalty, the warning of the death penalty, before even instituting the commandments that are to be enforced and punished by death, which happened only on the third day “in the morning” as we read. At dawn, no doubt.

I’ll conclude by just pointing to the other implication of dawn, which has already been put in play, especially in this last biblical quotation. It is that of God’s revelation to the chosen messenger or witness or martyr, be it Moses, or Jesus, or Joan of Arc, or Hallaj. Add Abraham at the head of the list, because it is indeed the Abrahamic tradition that Derrida means to invoke in the final pages of this session on the theological-political concept of the death penalty. These are among the densest pages of not just this session, but the whole seminar. Derrida advances a preliminary but incisive proposal to think the death penalty not as an enforced consequence of the theological-political but perhaps just the reverse. This proposal goes counter, one might say, to “le bon sens même,” which supposes that first comes a political, or political-theological regime, which decrees or institutes as only one of its instruments the death penalty. Here, for example, is Robert Badinter in his speech on Sept. 17, 1981 to the Assemblée Nationale, leading up to the definitive abolition of the death penalty in France. Having remarked that in free countries abolition is almost



everywhere the rule, but in countries where dictatorships reign, the death penalty is also enforced, he continues (I translate roughly):

This division of the world is not the result of a simple coincidence, but the sign of a correlation. The true political meaning of the death penalty is that it indeed *proceeds from the idea* that the state has the right to dispose of the citizen up to taking away his life. This is how the death penalty becomes inscribed in totalitarian regimes. (Quoted in *La Peine de mort, de Voltaire à Badinter*, ed. Sandrine Costa [Paris: Flammarion, 2001]; my emphasis)

To this apparently logical order—first the state, an idea of the state, from which proceeds as a logical consequence the death penalty—Derrida suggests that “One must perhaps proceed in the opposite direction, that is, attempt to think the theologico-political in its possibility beginning from the death penalty. One would then ask oneself: ‘What is the theologico-political?’ And the answer would take shape thus: the theologico-political is a system, an apparatus of sovereignty in which the death penalty is necessarily inscribed. There is theologico-political wherever there is death penalty” (32, 28). The trace of the death penalty, in other words, stands in that doubtful half-light of dawn, the dawn of sovereignty.

I’ll end on this reminder that we are reading here the beginning of the two-year seminar that will be followed, starting in 2001, with the seminar titled “The Beast and the Sovereign.” We are thus reading backwards, toward one of the dawnings of that later seminar as well.

### **Postscript**

I had finished this presentation, I thought, when a few days ago I reread the last session, the 11<sup>th</sup>, of the seminar, and came upon this passage that I had forgotten. I

will translate it impromptu. Derrida has just remarked that “the idea of that the death penalty was a problem had not emerged” when Montaigne was writing, in the 16<sup>th</sup> century.” Then in a long parenthesis, he remarks:

It will await the Enlightenment, and, once again this gives us access to a problem if not a definition as to the essence of the *Lumières*, or the *Aufklärung*, or the *Enlightenment* or the *Illuminismo*: the essence of the light shared by all these enlightenings, the essence of this “aube” (*dawn*), would it not be the twilight [*crépuscule*] of the death penalty, the doubly *crépusculaire* moment in which one begins to think the death penalty, starting from its end, starting from the possibility of its end, starting from the possibility of an end that breaks like day, and already begins to condemn the condemnation to death? The century of the Enlightenment would be like the rising, the sunrise, the east or the yeast [*le levant ou le levain*] of a diagnostic, prognostic speech: the condemnation to death is condemned, in the long run [*à échéance*]).