

Presentation on the Fifth Session of *La peine de mort*:
On the Final Coherence of the Categorical Imperative

Today, I am going to talk about Derrida's discussion of the double bind in Kant's development of the legislation of the death penalty. Although as Derrida emphasizes, the categorical imperative of the civil penal law is internal to the state, that is, to the community as commonwealth, I propose that the logic of the double bind also extends into Kant's theory of public and cosmopolitan right. The two exceptions to the death penalty, namely, maternal infanticide and duels, may thus also be exceptional aspects of Derrida's evocation of *mondialisation* that we have been following.

I intend to start from the end of this Kantian knot instead of its beginning, to go right to the heart of what Derrida calls Kant's "extraordinary logic and also stupid uselessness" (162). Kant can only untie the knot formed by the two exceptions to the categorical imperative of penal justice by insisting that there are times – in the cases of the duel and maternal infanticide – that public justice arising from the state is an injustice in relation to the justice emanating from the people. Mothers who kill their children out of wedlock and duelers who kill his or her opponent are obeying honorable, subjective motives, which are far from being barbaric or ignorant. Instead, the "residues" of their states of nature reflect the inadequation of customs and civil law. The categorical imperative does not disappear in the occasion of these two cases of exceptions; it merely awaits the dawn of its full coherence. I quote:

“If the categorical imperative – which remains (*bleibt*) in any case – is one day to be agreement with customs, then culture, non-barbarity, and civilization are necessary, which is to say: it would be necessary for women no longer to have children out of wedlock and for there to be no more cause for dueling, for the sense of honor to be respected in fact by morality; then the knot will be untied [...] In other words ... when the history of morality and of civil society will have progressed to the point where there is no more discord between subjective motives and the objective rules, then the categorical imperative that presides over the death penalty will be fully coherent, with neither cruelty nor indulgence, but of course, there will be no more need to sentence to death” (163).

And we might add – there will be no more need for the abolition of the death penalty. I am aware that in the second half of the seminar which we have not read, Derrida asks the quintessential question: *so what*, so what if we no longer have in practice the death penalty? This question does not just undo the simplistic division between the proponents and opponents of the death penalty, and that between life and death itself. Most of all, it undermines the teleological presuppositions of eventually arriving at the proper of man, or which comes down to the same thing, the proper of God. In Kant’s case, the untying of the capital knot will mean the final triumph of the *homo noumenon* over the *homo phaenomenon*. The final coherence of the categorical imperative as imagined through the two exceptions to penal civil justice also means the ultimate reconciliation of the two parts of the human.

My suspicion is that to truly understand the limits of such a “final coherence of the categorical imperative” that may be thought of Kant’s version of a utopian society, it is not enough to remain within national sovereignties or boundaries, precisely *because* Kant specifies, and Derrida stresses on this, that the categorical imperative of the civil penal law is internal to the state. Precisely because the child born out of wedlock is said

to be outside the law and hence outside of the commonwealth (Kant's words were: "stolen into the commonwealth like contraband merchandise," qtd. in Derrida 159), to think the limits of the final coherence of the categorical imperative demands that we push the exteriority of the exception to its furthest possible outside. If we can think the exception to the categorical imperative not as an accidental outside but as its requisite, necessary exteriority, there is absolutely no guarantee that the categorical imperative of the civil penal law would, without fail, be contained to the state. Perhaps one attraction of any philosophy of exteriority is its simple geographical or spatial dimension. Therefore my question is this: as part of Kant's larger moral philosophy, what does such an impossible scenario signify for men in general, for the relation between individuals and for the notion of people at large?

To attempt to answer this, I turn to Kant's theory of cosmopolitan law, which must be said, is not concerned with the relation between states but with status of individuals in their dealings with states of which they are not citizens. Hence even though Derrida's discussion of Kant in session five concerns civil penal justice within the state, the concept of public right from the *Metaphysics of Morals* includes not only political right but also international right. To repeat from this session, the perfect scenario of the full coherence of the categorical imperative arises when public justice accord with the justice of the people. Whereas the people [*Volk*] owes its existence only to the sovereign's legislation, maternal infanticides and duels seem to prove the exception to the sovereign.

I wonder what may be drawn here from Kant's usage of the concept of people. Kant often uses the German word for people, *Volk*, when he is talking about the legal sense of the nation. In his *Anthropology*, he defines the notion of people or *Volk* according to a mix of biological and cultural factors. A people's acquired character grows out of their racial makeup through culture, through language and religion. The separation of different racial and national groups is essential for the dynamics of cultural progress. But they bring hostility, competition and war as well. And it is here that Kant's double bind can be seen in a new light: the eventual closing of the gaps between public justice and justice of the people in a sovereign state, i.e. the eventual coherence of the categorical imperative, as an Idea in the strongest sense of the word, would also imply a gradual, eventual movement toward the mutual understanding and peace between biologically and cultural diverse peoples. Not only will the categorical imperative for the talionic law be made non-paradoxical, in other words, truly universal and without exception, classical and modern international law itself will be transformed into a new cosmopolitan order. (It is important to recall that for Kant, a cosmopolitan order does not mean that states lose their sovereignty). What kind of place does the death penalty have in Kant's so-called "perpetual peace"? And if so, how does it rank in the hierarchy of other ways of killing or putting to death?

As such, Kant's teleological "perpetual peace" traces the optimistic and irresistible teleological tendency that Derrida critiques in Hugo. In this future, the graveyard sign hanging on a certain Dutch shopkeeper's sign have no implications for

those sentenced to the death penalty. As we know, to the question ‘Is the Human Race Continually Improving?’”, Kant’s response is problematically affirmative.

Some closing questions, if the specific type of literature that Derrida studies has a certain adherence to the abolition of the death penalty, does it also adhere to a certain notion of the people, to a certain coming-together of people that lies beyond the Abrahamic tradition? If preliminary answer is ‘yes,’ if we can put aside momentarily the satirical tone of the graveyard sign made famous in Kant’s preface to the essay “To Perpetual peace,” then, literature, or philosophy cannot be completely disinterested; as Baudelaire says, “at least you are interested in the question” (169). We must all be somewhat interested in this question if we are here; or at least we are very much interested in Derrida’s questions. I then leave you with a final one of my own that has been following me since I read session 4. Explaining the reason for his taking of examples from the internet, Derrida writes:

“(and if I take examples, it is not so as to transform this seminar into a militant cell but to let you know [*donner à savoir*] – and knowledge is the thing and the mission and the ethic of a seminar – to inform you and let you know what is happening in the world today, in the world in the process of globalization ...)” (97).

I hear echoes of Marx in the word ‘transformation’, and some strands of Foucauldian *pouvoir/savoir* in this “to let you know” [*donner à savoir*]. What kind of interest lies in such a “*donner à savoir*,” in letting one know not just of the world in the process of globalization but of an Idea of the world that has been both the possibility and impossibility of knowledge itself?

