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(On *Pardon-Parjure: La peine de mort I*)

### Derrida's Abolitionisms and the "Example" of the United States

I'm going to start with a brief discussion of the latter half of the fifth session, and then work my way into some of the earlier sessions that we've covered, paying special attention to two related problems. The first concerns the possibility of a "principled" abolition movement, a movement that rejects the death penalty *in principle*, and the attendant problem of defining a stable, shall we say *sovereign* concept of the death penalty. From there, I will move to a consideration of the role of the United States in the seminar and of the place of the death penalty in the United States. The connection between these two problems (i.e. the "principle" of abolitionism and the role of the United States in the seminar) lies in the sometimes repressed or overlooked differences between the history of the death penalty in France and in the Americas, differences that call into question any stable "principle of the death penalty" and thus any general principle of abolitionism. This is a complication that takes on paramount importance in the context of any *mondialization* or *globalatinization* of the death penalty or otherwise, forming a fold in this development that Derrida frequently mentions but doesn't approach head on.

So, to begin with, In the final pages of Session Five, Derrida reads Article 6 of the *International Covenant on Civil and Political Rights* (which he gets confused with the *Universal Declaration Human Rights*-- cf. translator's note) in order to, as he puts it, "at least begin to analyze the hypocrisy, the strategy of the double language that, on the subject of the death penalty, constructs or structures, in what is *here* an unconscious and symptomatic fashion and *there* a deliberately calculated fashion, the different well-intentioned declarations that I have already mentioned" (171). Derrida analyzes the ways in which the drafting of the *Universal Declaration* and the

*International Covenant* involved an impressive work of equivocation as to the status of the "right to life" and the assertion that "No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment."

Likewise, in session two, Derrida discusses a certain contemporary abolitionist strategy, the one reliant on the motif of "cruelty," as both "fort et faible": strong for its power to motivate, but, he argues, "weak because it concerns only the mode of application, not the principle of the death penalty, and it becomes impotent in the face of what claims to be an incremental softening, an anesthesia that tends toward the general, or even a humanization of the death penalty that would spare the cruelty to both the condemned one and the witnesses, all the while maintaining the principle of capital punishment" (66).

But, and this is implicit, I believe, in the seminar, this lack of a worldwide principled stand against the death penalty, the contemporary failure to reproduce Hugo's commitment to the "inviolability of human life" and "the pure, simple, and definitive abolition of the death penalty," this weakness and lack of a principled stand is not simply due to a subjective failure (nor, as we have seen, does Derrida find Hugo's logic to be unproblematic or undeconstructible). The generally unprincipled nature of the international abolition movements surveyed by Derrida seem, rather, to be bound to the real lack of any pure, simple, and definitive concept or principle of the death penalty as such.

Derrida indeed thematizes this difficulty and instability within the very concept of the death penalty in, among other places, his initial analysis in session three of the 1948 *Universal Declaration of Human Rights* and the 1976 *International Covenant on Civil and Political Rights*, paying particular attention to the positing there, as throughout the history of Jurists and Philosophers writing on the death penalty, of war as an exception (and Kir has helped us already to work out the logic of exception in this session with regard to Derrida's writings on Schmitt). Derrida writes,

The concept and the name of war, which alone allow one to kill legally the foreign enemy where, the death penalty once abolished, one does not have the right to kill the citizen-enemy, this is what makes the abolitionist discourse so fragile when it banishes the death penalty at home and

maintains the right to kill in war. Between civil war and national or international war, there is the *war of partisans* whose concept Schmitt elaborated and which introduces, as he showed, great disorganization into the order of this polemological conceptuality. And history sometimes, not always, has charge of changing fragile and precarious names, that is, of unmasking hypocrisies, removing the masks in this theater of nomination.... What does "war" mean? What is a war? A civil war and a national war? What is a public enemy?

In light of this essential deconstructibility of the notions of a "state of war" or of "peacetime," the "concept" of the death penalty as a concept needs, like every sovereignty or supposedly indivisible concept, to be reiterated. This anxiety over the concept of the death penalty appears indeed on both sides of the struggle for and against the death penalty, which is part of why abolitionism cannot work as a clear cut, definitive, and final act of cutting something off, of ending it once and for all. Thus the opening to "the worse" than the death penalty, or simply to something other than the death penalty. Derrida insists, as always, that any law requires force, it responds to an ineluctible resistance, it is not of the order of description, as discourses surrounding natural law claim to be (but never are entirely), or even of the totally felicitous performative. So this "concept-limite" of the death penalty is anything but indivisible, a fact that I think haunts any attempt to come to terms with the sovereign operation of the "death penalty," a concept extends beyond what Geoff so usefully pointed out was a particular fantasmatics of "executive" power as the essence of sovereignty.

Which brings us precisely to the place of the United States in the seminar, as a force of resistance to the predominant schema of an executive exercise of power, of putting to death or of letting live, that Derrida seems to trace throughout the seminar. It is necessary, then, to turn to the rather uneven pairing of France and the United States in the seminar (I would say the Americas more broadly, but would have only passing reference to Chile and Argentina to work with). The question that I would raise, then, would be that of the place of the United States in the seminar, a place that is given only a certain kind of space, a sort of deictic space that is consistently over there, pointed toward, rather than inhabited or deconstructed in the same manner as French literature or German philosophy. I would submit the

hypothesis that the United States operates in the seminar as a force of empirical bolstering, a site for lists and statistics more than one of genuinely political-philosophical intervention, but that these very statistics point at the same time toward some necessary refinements of and resistances to the philosophical and political concepts and rhetorics at work throughout the seminar.

We would do well to look particularly at the 3rd session here, in which Derrida, after discussing a hypothetical "map" of the United States that would depict the comparative density of executions in the various states, he contends that

This index is enough to remind us that one can understand nothing about the situation of the United States faced with the death penalty without taking into account a great number of historical factors, the history of the federal state, the history of racism, the history of slavery, and the long, interminable struggle for civil rights and the equality of Blacks, the Civil War, the still critical relation of the states to the central government and federal authority, the ethics of so-called self-defense that overarms the population to a degree unknown in any other country in the world, a feeling of explosive insecurity unknown in Europe, against the background of social and racial inequality, etc.; and I am deliberately leaving aside the immense religious question, the immense question of Christianity... (95)

But he does not leave this aside in order to continue a discussion of the above "historical factors." Rather, he continues to consider Christianity before returning to the problematic of cruelty with which the session began--a problematic that, once again, he views as a sort of hypocritical, unprincipled or at least merely partial approach to the death penalty, before turning to the discussion of war that I cited above. But I would like to follow Derrida's indication here that one must take into account this great number of historical factors.

Of course, a seminar on abolitionism in the US would be a very different project, but it seems to be precisely the project for an understanding of the mondialization that Derrida sees under way, which involves the redefinition of sovereignty and of war, a redefinition or deconstruction that, as I already discussed, Derrida signals is necessary for any understanding of the death penalty and of abolitionism. We might, for example, consider some of the following wars: the war on drugs, the war on terror, the war on "illegal" immigration, wars of the sexes, class warfare (not to mention some different sovereignties that take on a peculiar

fantasmatic shape in the United States and around the world, for example the dictatorship of the proletariat, which would bring us to a quite different tradition of "permanent revolution" from the one we began to trace yesterday through Blanchot). One might also consider, for example, a document like *"It's War in Here": A Report on the Treatment of Transgender and Intersex people in NYS Men's Prisons*, put together by Morgan Bassichis and Dean Spade of the Sylvia Rivera Law Project in New York City. (<http://srlp.org/resources/pubs/warinhere>)

As a result, when Derrida discusses some different modes of execution, especially the specter of hanging that he links to a certain version of sexual difference via the penile erection, he does not see a link to the popular imagination of hanging in the United States, a spectacle that is a profoundly raced and sexed scene--one thinks of the Salem Witch trials of course, but even more significantly of the time-honored American tradition of lynching, itself tied to a phantasm of black masculine (and white feminine) sexuality that seems to be as strong today as ever. Thus to speak of the death penalty in the United States is to speak of race, even of the reality of genocides. But it is also to avoid speaking of, or to speak of merely a symptom of, much more pervasive projects of the management of life and death in the Americas, of the control of populations through rape, forced sterilization and other abuses of what are today called reproductive "rights," both in Antebellum history and in the welfare state that has been rapidly dismantled over the past 40 years.

Thus the question of abolitionism in the United States, and of any logic of abolitionism in general, must take into account these other state-sanctioned and informal forms of punishment. Bear with me as I turn to a somewhat lengthy passage from *Abolition Democracy: Beyond Prison, Torture and Empire*, a small collection of interviews with Angela Y. Davis and Eduardo Mendieta, in which Davis explores among other things the relation of the death penalty to chattel slavery, racism, and abolitionism. My goal here is precisely to consider a logic of abolitionism that would not be a merely negative project. Davis says:

DuBois argued that the abolition of slavery was accomplished only in the negative sense. In order to achieve the *comprehensive* abolition of slavery...

new institutions should have been created to incorporate black people into the social order. The idea that every former slave was supposed to receive forty acres and a mule... originated in a military order that conferred abandoned Confederate lands to freed black people in some parts of the South. But the continued demand for land and the animals needed to work it reflected an understanding among former slaves that slavery could not be truly abolished until people were provided with the economic means for their subsistence. They also needed access to educational institutions and needed to claim voting and other political rights, a process that had begun, but remained incomplete, during the short period of radical reconstruction that ended in 1877. DuBois thus argues that a host of democratic institutions are needed to fully achieve abolition—thus abolition democracy.... What, then, would it mean to abolish the death penalty? The problem is that most people assume that the only alternative to death is a life sentence without the possibility of parole. However, if we think about capital punishment as an inheritance of slavery, its abolition would also involve the creation of those institutions about which DuBois wrote--institutions that still remain to be built one hundred forty years after the end of slavery. If we link the abolition of capital punishment to the abolition of prisons, then we have to be willing to let go of the alternative of life without possibility of parole as the primary alternative. In thinking specifically about the abolition of prisons using the approach of abolition democracy, we would propose the creation of an array of social institutions that would begin to solve the social problems that set people on the track to prison, thereby helping to render the prison obsolete. There is a direct connection with slavery: when slavery was abolished, black people were set free, but they lacked access to the material resources that would enable them to fashion new, free lives. Prisons have thrived over the last century precisely because of the absence of those resources and the persistence of some of the deep structures of slavery... The most compelling explanation of the endurance of capital punishment in the U.S.—the only advanced industrialized nation that executes its citizens routinely—can be discovered in its embeddedness in slavery and in the way the racism of slavery caused it to be differentially inflicted on black people. (95-98)

I can imagine Derrida taking issue with, or at least interrogating, Davis's belief that there might be a "solution" to social problems or a possibility of "new, free lives," but I also don't think it's so far-fetched to imagine, as Derrida does in session 1, that it's possible to "change something." So, to return to Article 6, we might perhaps consider how the instantiation of the death penalty, precisely the instantiations that are *not* condemned therein, might have to do with other points in the very same article six of the Covenant to which Derrida pays less attention, particularly the third point, in which it is asserted that "When deprivation of life constitutes the

crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide" (172). The profound instability of these concepts of death penalty, war, genocide, and punishment requires another thinking of abolition, one that Derrida's attention to Hugo's work and the various International Compromises misses but that his own thinking indicates throughout the seminar. I'll leave off there for lack of time, but I'm interested to know what other people think about the place of the United States in Derrida's work, the instability of the death penalty as sovereign concept, or the constitution of other abolitionisms.

(NB. These are questions that will come up in the 7th session on Marx in *La lutte des classes en France*, in which Derrida will use an Althusserian rhetoric (of "the relative autonomy of the juridical" and its "overdetermination" in order to bypass what he sees as Marx's economism when Marx suggests that the value and validity of any abolitionism will be determined by its role in the class struggle. Derrida will argue there that "interest" is a deconstructible concept, and this explosive question of interest does seem to be at the heart of Derrida's thinking in this seminar. A problem for another time)