

Philosophy and the Death Penalty

Michael Naas, DePaul University

Derrida begins the very first session of his two year seminar on the death penalty with a rather vivid, literary, theatrical, perhaps even cinematographic evocation of an execution, the early light of dawn in a prison, the memory of a sovereign decision that had determined the place and hour of the execution, and the possibility of a last minute pardon from the sovereign himself who might always halt the proceedings with, say, a telephone call at the eleventh hour from the presidential palace or the prime minister's office or, imagine—because this almost never happens in reality—the governor's mansion in Texas. There are even stage directions in these opening pages to control the pace or rhythm of the narrative: Derrida writes between sentences “pause,” “long pause,” and so on. Though he is not describing any particular death sentence but the general setting or *mise-en-scène* of a death penalty, though there is no particular neck in the noose or head beneath the blade of the guillotine, the opening is meant to be dramatic, full of pathos, for “who would dare conduct,” Derrida asks parenthetically, “a non-pathos-laden seminar on the death penalty?” It is at this point in his description—we are on the second page of the seminar—that Derrida draws our attention to someone who, he says, is almost always there at the scene accompanying the prisoner from his cell, namely, a priest, whose presence at the scene elicits from Derrida this parenthetical remark: “I insist on this because I will be speaking above all of political theology and of the religion of the death penalty, of the religion always present at the death penalty, of the death penalty as religion.”¹

Religion and the death penalty, religion as the death penalty, the death penalty as religion: any of these, as I will argue, could have been the subtitle of this entire seminar. Religion, the death penalty, and then, as if these were inseparable from both, punishment, sin, sacrifice, redemption, blood, passion, agony, aesthesis, anesthesia, the cross, the gallows, the guillotine.... In retrospect, we should not have expected anything different. For what is becoming clearer and clearer with the publication of each new volume of the seminars is that during the last two decades of his life what might have appeared to be a

series of seminars on more or less contemporary philosophico-ethical problems or debates—“questions of responsibility,” as Derrida himself called them, namely, the secret, testimony, hospitality, perjury and pardoning, the death penalty, the question of sovereignty and the animal—were in the end all concerned first and foremost with *religion*, or rather, with the political theology of these questions. With the publication of each seminar it is becoming more and more clear that Derrida was interested in showing that so many of the concepts we believe to be purely political or even explicitly secular have their origins in and so still need to be thought in relation to their Judeo-Christian heritage. The list of these concepts is now long and impressive. It includes everything from a certain conception of democracy or cosmopolitanism to literature, work, the world, forgiveness (see *DP1a* 82, 89, and *DP1b* 135, 152), even the concept of religion tolerance. At the top of this long list would be a certain notion of political sovereignty that, according to Derrida, who, on this account at least, is following Carl Schmitt, never broke away—and not even in modern democracies—from its theological origins. The theologico-political notion of a sovereignty that is unified or unitary, unconditional and all-powerful, would thus be at the origin of a certain conception of the death penalty and its attendant notions of sacrifice, redemption, and the sovereign pardon. One can see quite clearly this Christian or theologico-political concept of sovereignty at the origin of the death penalty in someone like Joseph de Maistre, when he writes, and Derrida cites, “the death penalty represents a divine weapon granted by the sovereign God to the sovereign monarch to fulfill a providential law” (*DP1b* 59). In the two years he devotes to the death penalty, then, Derrida seems to want to show how the concepts, rhetoric, symbolism, images, and imaginary of the death penalty are all determined and *marked* by a Christian or Judeo-Christian theologico-political heritage.²

The question of the death penalty thus fits in quite nicely to Derrida’s overall project to deconstruct this theologico-political heritage.³ But it is perhaps still legitimate and instructive to ask why Derrida would devote two full years, from 1999-2001, to the question or theme of the death penalty almost twenty years after it had been abolished in France and a decade after the majority of European states had also abolished it or were preparing to do so. Unlike questions of pardoning, forgiveness, testimony, or the nature and scope of sovereignty in general—questions that were often at the center of scholarly

debates and were even discussed in the popular press in France and throughout Europe at the time (Derrida mentions here, for example, the Catholic Church asking pardon for the Inquisition, and he speaks elsewhere around this same time of the Truth and Reconciliation Commission in South Africa, of debates over national and international sovereignty, and so on)—the abolitionist debate in France and Europe had become by 1999 something of a non-issue, a thing of the past, *une affaire classée*. It is true that the death penalty had still not been universally abolished and that in 1999, says Derrida citing the statistic of Amnesty International in *For What Tomorrow*, more than 1,800 people were executed in 31 countries, the vast majority of these in China (1076), Iran (165), Saudi Arabia (103), and then the United States (98). But still, why would Derrida take up the question of the death penalty nearly two decades after it had been abolished in France? Why devote two years to the subject so seemingly late in the game? (see *FWT* 156)⁴

One reason is surely the American context, which Derrida refers to regularly in the seminar, as well as his American audience, which he always seems to take into account in these seminars, especially since he would be giving large portions of them in the United States. In one of the interviews in *For What Tomorrow* Derrida even speaks of the specificity of these sessions in the U.S., noting: “during my seminars, in New York, in Chicago, in Irvine, California, we spent the first part of our sessions analyzing items from the written and televised press on the subject” (*FWT* 158)⁵. The fact that many states within the United States still maintained and exercised the death penalty will be of great importance to Derrida throughout the seminar. But it is not insignificant that this fact is *interpreted* by Derrida in the light of his general focus on the theologico-political dimension of the death penalty. It is in large part because the United States is, as Derrida calls it, “the most Christian democracy in the world” that its resistance to abolishing the death penalty will be of such interest to him (*DP1b* 71).⁶ The American context will also provide Derrida with prime source material for the debate over the nature of cruelty in the definition of cruel and unusual punishment, for the whole question of anesthesia, for the question of race in the unequal application of the death penalty, for the use of capital punishment on the mentally handicapped, and so on (see *FWT* 158). There will be, notice, no similar scrutiny of the three countries that led the United States in executions at the

time, Iran, Saudi Arabia, and, especially, China, in large part, no doubt, because they are neither Judeo-Christian nor predominantly European in culture and so have not entered into the debate over the death penalty in the same way.⁷

One must thus constantly keep the American context in mind when reading this seminar, even if the subject is significant for Derrida well beyond the American context—and even beyond any eventual abolition of the death penalty in the United States or elsewhere. For throughout the seminar Derrida will ask whether even an eventual universal abolition of the death penalty in law really would do away with the death penalty altogether, that is, with its rhetoric and its logic. He will thus ask whether some death penalty would not remain even there where it has been abolished by law. To return to the point with which I began, we might compare this to Derrida's insistence that, even in a so-called secular age, the theological origins of political concepts remain to be deconstructed. Indeed it is perhaps *especially* in a supposedly secular age of cosmopolitanism, humanism, and so on, that the theological origins of concepts such as democracy, the nation state, the nature of the human, and so on, call out to be questioned. This relation between the abolition of the death penalty and the dawn of a secular age is thus perhaps more than just a comparison or analogy here. In both cases, Derrida is trying to uncover the now very hidden and often denied religious or theological origins of a certain conception of the human, of humanism, human rights, and so on, that makes it at once possible both to speak of a secular age and to call for the universal abolition of the death penalty.

But the comparison or analogy runs even further. Both the ideology of secularism and the abolitionist struggle, Derrida underscores, are *modern* inventions, inheritances from the Enlightenment. It is no coincidence that Derrida's analyses of the death penalty, of secularism and cosmopolitanism, all focus explicitly on the very same time period and often the very same thinkers—for example, Kant, who, as the figure par excellence of the Enlightenment, features prominently in Derrida's work on hospitality and cosmopolitanism, on democracy and religion, and, here, on the death penalty. While a certain death penalty—or a certain ritualized putting to death—has been around for millennia, both inside and outside of Europe, Derrida's primary focus is on the death penalty in European modernity and European law, including their extension and

transformation in American law. In *For What Tomorrow* Derrida goes so far as to ask rather provocatively whether “there is a ‘death penalty,’ dare I say worthy of the name, outside European law” (*FWT* 148). It is to this sphere of European law, along with the theology and philosophy that inform it, that Derrida will restrict for the most part his analysis. While Derrida in the opening sessions of the seminar will thus make a couple of references to Plato’s support of the death penalty, while he refers to a certain death penalty in Exodus, and while all four of his “theatrical paradigms of the theologico-political dimension of the death penalty” will be decidedly pre-modern (Socrates, Jesus, Joan of Arc, and Al Halaj (*DP1b* 26), the bulk of the analysis will be focused on Enlightenment (Beccaria, Kant) and post-Enlightenment figures (Hugo, Camus, Blanchot) and on the history of the death penalty in the United States.

To ask about the death penalty is thus another way to ask about the theologico-political notions that inform modernity and the Enlightenment (*DP1b* 177). One can thus ask what it was about the European Enlightenment that led it to produce these related discourses of abolitionism and secularism, or one can follow Derrida when he suggests that “the death penalty is [perhaps] the best way to ask the question “What is the Enlightenment?”” (*DP1b* 57) According to this latter hypothesis, the death penalty would be an exemplary theme for illuminating the underlying Christian or theologico-political logic and rhetoric of the Enlightenment and everything that has followed from it (*DP1b* 75).⁸ It would be through the death penalty—through an analysis of discourses both for and against it—that Derrida will be able to expose “the double Christian root of both the death penalty and its abolition” (*DP1b* 33) and, it seems to me, the Christian root of its *abolition* even more than the death penalty itself precisely because this root is even more hidden and often passes itself off for something it is not—whether this be a pure secularism or an atheistic humanism.

Indeed it is notable that Derrida in the seminar seeks to identify and question the religious dimension not just and not even primarily of various Enlightenment or pre-Enlightenment *justifications* of the death penalty but of the abolitionist arguments and rhetorics against it. Because the theological origins of the death penalty itself are so obvious, as we saw a moment ago in the quote from Joseph de Maistre, Derrida will spend very little time on such pro-death penalty discourses, reserving more of his analysis

for the more difficult case of Kant or abolitionists such as Beccaria, who try to think the death penalty in relation to both secularization and divine law (*DP1b* 160). But Derrida will spend even more time, indeed *much* more time, on Victor Hugo and, to a lesser extent, Camus, in order to demonstrate how the former's conception of natural law coincides with religious law or a law of Christ (*DP1b* 5, 43-45, 49) as well as a certain Christian humanism (*DP1b* 65, 70, 83, 84c, 91c) and how the latter's atheistic discourse conceals a very similar Christian humanism.

The opposition Derrida plays out in the death penalty seminars is thus not between a discourse that justifies the death penalty through a reference to divine sovereignty and a purely secular, non-religious discourse against the death penalty. It is, rather, a question of "[the] divine law of abolitionism against [the] divine law of the death penalty" (*DP1b* 59). When it comes to the abolitionists versus the proponents of the death penalty, Derrida detects Christian origins behind both, since both speak in the name of life, the inviolability of life, or, like Kant, in the name of a value or dignity greater than life.⁹ Instead of framing the debate in terms of a Christian or religious defense of the death penalty and a secular opposition to it, Derrida tries to find the common Christian root of the two discourses and, in the process, explain what he calls the "ambiguity" of Christianity, that is, its simultaneous promotion of both the sanctity of life and its call for the sacrifice of life (*DP1b* 4).¹⁰

Not even among the abolitionists is the opposition Derrida develops between a religiously oriented abolitionism that uses the language of natural law, humanism, or the spirit of the true Christianity (Hugo) and a non-religious or even atheistic or anti-Christian abolitionism (Camus) (*DP1b* 91-92). For Derrida, the discourses of both Hugo and Camus are Christian (*DP1b* 92, 157). As he argues in relation to the latter, "Christian monotheism is a humanistic immanentism . . . and Camus's discourse . . . would be more Christian, more Christ-like, than he thought" (*DP1b* 92).¹¹ Though Derrida asks early in the seminar whether the abolitionist movement is Christian *or* a kind of atheist humanism (*DP1a* 95), he ultimately demonstrates that this is a false opposition insofar as humanism is in most of its incarnations essentially Christian.

It might thus be said that, for Derrida, the debate over the death penalty is Judeo-Christian all the way down, on the side of both the proponents and the abolitionists. If

Derrida spends so much more time with the abolitionist discourses than with those of the proponents of the death penalty, so much more time criticizing, deconstructing abolitionist discourses, it is perhaps because his goal—as an avowed abolitionist—is to strengthen and bolster these abolitionist discourses by means of another, less deconstructible, less Judeo-Christian and more “philosophical, more generalizable, abolitionism. It is because, as he says in *For What Tomorrow*, the abolitionist discourse “in its present state, seems to me greatly perfectible, philosophically and politically fragile, also deconstructible” (*FWT* 148).

Derrida is thus writing *about* a certain historical epoch coming out of the European Enlightenment in which arguments both for and against the death penalty are marked by a Judeo-Christian heritage and he is writing *within* a particular historical epoch in which the prevailing rhetoric within much of Europe is that the universal abolition of the death penalty is well underway, an abolition that will be carried out in the name of the fundamental dignity of man or in the name of human rights, in the coming of age of a humanity that will have left behind the religious beliefs of its childhood. But because the concepts in the name or under the aegis of which this abolitionist discourse is to be constructed are all marked, as Derrida suggests, by a certain Judeo-Christian theology, then the deconstruction of these concepts remains to come, and it remains perhaps all the more urgent when it appears unnecessary or already completed. Derrida thus seem to be suggesting here that a deconstruction of the death penalty is never more necessary than *after* its abolition or its imminent abolition, just as a deconstruction of Christianity or the theologico-political is never more necessary than in a so-called secular age.

What is called for, then, is a deconstruction of certain concepts, practices, and institutions, including the institution of literature in both its pro-death penalty and abolitionist forms, but perhaps first of all, for Derrida, a deconstruction of the Western philosophical tradition. For here as elsewhere Derrida is attempting to show both the theologico-political stakes of the discourses he is analyzing and the tendencies, the presuppositions and prejudices, of an entire philosophical tradition, the systematic and not simply contingent or occasional relation between, here, philosophy and the death penalty. As Derrida puts it in a very telling marginal note to the very first session: “No

philosophy against the death penalty” (*DPI* 24). In the interview in *For What Tomorrow* entitled “Death Penalties” Derrida is even clearer than in the seminar itself about philosophy’s support of the death penalty. He there speaks of this “most stupefying—almost the most stupefied—fact about the history of Western philosophy: never, *to my knowledge*, has any philosopher *as a philosopher*, in his or her strictly and systematically philosophical discourse, never has any philosophy *as such* contested the legitimacy of the death penalty. From Plato to Hegel, from Rousseau to Kant (who was undoubtably the most rigorous of them all), they expressly, each in his own way, and sometimes not without much hand-wringing ([as in] Rousseau), took a stand *for* the death penalty” (*FWT* 146).

This sweeping claim about philosophy, however interesting in itself, might profitably be juxtaposed with Derrida’s question in *Rogues*, “why are there so few democrat philosophers (if there have been any at all), from Plato to Heidegger?” (*Rogues* xxx) and his claim in *The Animal That Therefore I Am* that no philosopher qua philosopher has questioned the single, indivisible line distinguishing man from the animal. Since Derrida is interested in the *system* that links various philosophies and philosophers, we are invited to ask along with him what notions of cruelty, sacrifice, or blood, what conception of the dignity of life or natural law, what religion, would allow philosophers across centuries, traditions, and languages—though particularly in European modernity—to maintain a discourse that is at once *pro-death penalty*, *anti-democratic*, and overwhelmingly *anthropocentric*. Derrida’s broad claims about philosophy’s support of the death penalty, its critique of democracy, and its affirmation of an indivisible line separating the human from the animal are similar not only in their scope and rhetorical formulation but in their affirmation of the very same “carno-phallogocentric” tradition that places man, and often a certain transcendence of man, at its center. To question the death penalty, then, is to question the “carno-phallogocentrism” of which a certain thinking of sovereignty, of democracy, of law, of man in relation to the animal, all form an essential part (*DPIa* 31).

What is it about philosophy, then, philosophy as opposed, perhaps, to literature, where Derrida finds all kinds of exceptions on each of these points, that leads to these positions?¹² Derrida’s answer would no doubt be complex and would work on multiple

fronts, but it would probably begin by pointing out a common call to sacrifice or minimize life in the name of a value or a life greater than life. From Plato's definition of philosophy as the practice of dying to Kant's identification of the priceless dignity of man beyond phenomenal life, to Heidegger's claim that only *Dasein* has a relation to death as such, philosophy identifies the confrontation or overcoming of death, the sacrifice of life, with the affirmation of a life beyond or greater than life, a life and thus a relationship to death that would be what is truly proper to man and *not* to any other form of animal life.

Derrida's task in the death penalty seminar is to show in each case how these concepts and practices—death penalty, carno-phallogocentrism, religion and philosophy—all form a system or a matrix, a structure or a structural ensemble. Without reducing any of these discourses to another, and without ignoring the particularities of each, Derrida demonstrates how a Christian or Judeo-Christian theologico-political heritage marks and determines these discourses, and particularly philosophy, in significant ways. His main objective in the seminar would be to criticize or deconstruct certain abolitionist discourses of modernity in order to develop his own, let us call it, more “philosophical,” less theological, less strictly Judeo-Christian, more universalizable, maybe even more Enlightened abolitionism. He does not want to be a philosopher who just happened to be against the death penalty, but a philosopher, perhaps the first philosopher, to provide a genuinely “philosophical” abolitionist discourse, a philosophical discourse that does not exclude, however, everything that is typically excluded from philosophy, be it literature, history, philology, rhetoric, theatricality, or pathos—the reason or reasons of the heart. And he would have provided an analysis that contributes to the larger deconstruction of the theologico-political and its notion of sovereignty that he would have been pursuing for many years and would continue to pursue right up to the end.

To conclude, I would like to suggest that it is only by looking at this larger context of the death penalty seminar that we will be better able to understand what at first sounded to my ears as a somewhat strange if not strained ending of this first year of the death penalty seminar. Is it a coincidence, or an essential consequence of the larger configuration he is trying to follow, that Derrida at the end of this first year of the seminar relates the question of the end of the death penalty to vegetarianism? Almost in

anticipation of *The Beast and the Sovereign* seminars, though also looking back at texts such as “Il faut bien manger” and those parts of *The Animal That Therefore I Am* that had already been written, Derrida seems to suggest that just as we would not put an end to carnivorousness or carno-phallogo-centrism by all becoming vegetarians, so we would not put an end to the death penalty by abolishing it in law. This does not mean, of course, that Derrida is suggesting we should not try to aim for such a universal abolition or that the question of eating or not eating meat should not be of concern. But in the course of this first year of the death penalty seminar Derrida has attempted to understand the underlying structure or logic of the death penalty beyond what is commonly called the death penalty in law. In other words, he has tried to provide a “philosophical” and not just a legal definition of it. He thus argues, for example, that “the *possibility* of the death penalty begins where I am delivered into the power of the other, be it the power of the other in me” (*DP1b* 141). The scandal of the death penalty would consist in this calculation *by the other* of the instant of my death, a mechanical calculation of the instant that leaves no room for the incalculable future or for the event—even if, though this is another story, this calculation is always a kind of phantasm of control or mastery over the event.¹³ In short, Derrida claims, what is brought to an end through the death penalty—or at least this is the phantasm—is the very *finitude* of my life. “Death penalty” thus comes to mean something different in the wake of Derrida’s analysis than it did before it. In line now with Derrida’s philosophical rethinking of the nature of experience, time, the future, and the event, it is more generalized, can no longer be rigorously opposed to other kinds of punishment or practices¹⁴, and can no longer be restricted to its legal definition, even if, as a committed abolitionist, Derrida believes one must fight against this definition as well. In short, it must now be thought—perhaps like cruelty—according to a *differential* rather than an *oppositional* structure. Even if the death penalty were universally abolished, therefore, there would remain this *differential structure* of the death penalty.¹⁵ And the same goes, for this would be as it were the ur-matrix for all these questions, for secularism: though we live in what many—and especially in France and Europe more generally—believe to be a secular, laic age, Derrida reminds us to remain vigilant in order to detect and deconstruct the religious dimension behind all our seemingly secular or non-religious concepts, from democracy to religious tolerance to the death penalty to,

especially, certain abolitionist discourses against the death penalty. Indeed the force of Derrida's deconstruction of the death penalty comes precisely from this vigilance in the face of the view—the dogmatic view—that now that the death penalty is on its way to being universally abolished there is no longer any death penalty to worry about. Derrida's seminar reminds us that this would be a serious and dangerous error of interpretation, and one that might easily lead to the triumphant return and intensification of the death penalty—either in its generalized form or perhaps one day in its restricted and traditional form, a death penalty that might one day return in the name or under the guise of a new humanism, in the name of a value greater than life itself, a value that would demand the sacrifice of human life in the name of a law or a humanity that exceeds human life.

Though Derrida will usually hesitate to call this an outright “deconstruction of Christianity,” to use the phrase of Jean-Luc Nancy, it is indeed a deconstruction of the Abrahamic lineage that Derrida seem to have undertaken during the last couple of decades of his work. If Derrida is less inclined than Nancy to use the phrase “deconstruction of Christianity,” it is perhaps because he is more wary than Nancy of reinscribing Christian concepts such as *fraternity*, *community*, or *love* in a different register, well aware, as he is, that Christianity will have undertaken throughout its history its own *Aufhebung* (*DP1b* 90) and its own deconstruction (*DP1b* 135), its own reinscription of concepts that leaves everything in tact—or else sublimates and raises everything to a new level. It has, for example, provided a powerful deconstruction of the concepts of life and death by relativizing or banalizing the latter through reference to a beyond while reinscribing the former as life-everlasting beyond the phenomenal, temporal realm (*DP1b* 146). Hence Derrida speaks in the death penalty seminar of a “radically non-Christian deconstruction” (*DP1b* 136), a non-Christian deconstruction of the Christian heritage of so many of our apparently secular terms, concepts, and institutions. This should not be understood, let me be clear, as an assault on religion or as a call for something like “the end of religion.” In *For What Tomorrow* Derrida maintains that while he has always pursued “as far as possible the necessity of a hyper-atheological discourse,” he has never had any desire “to destroy or to disqualify” an Abrahamic culture (at once Jewish, Christian, Muslim) on which, as he says, he has never ceased to meditate (*FWT* 164). Because since Christianity has carried out its *own* deconstruction of

sorts, Derrida *is* calling for “a deconstruction of *this* deconstruction,” deconstruction of this “‘Christian’ landscape of deconstruction” (*FWT* 165), a “philosophical” deconstruction, therefore, of this *Christian* deconstruction, which would thus have to rethink, among so many other things, blood, sacrifice, life, death, law, redemption, survival, and perhaps first of all, because people’s lives are still on the line as a result of it and because it is easy to think that it belongs to a bye-gone age, the death penalty.¹⁶

¹ Derrida speaks near the very end of the seminar of “the priests and the confessors ritually assigned to the last scene” (*DP1b* 174).

² On the theologico-political in general, see *DP1b* 4, 43, 135; for the theologico-political stakes of pardoning, see *DP1b* 157 and 152: “This is one of the places of articulation with religion and with theology, with the theologico-political. For this phantasm of infinitization at the heart of finitude, of an infinitization of survival assured by calculation itself and the cutting decision of the death penalty, this phantasm is one with God, with, if you prefer, the belief in God, the experience of God, the relation to God, faith or religion.”

³ Derrida has a text from around this time entitled precisely “Peine de mort et souveraineté (pour une déconstruction de l’onto-théologie),” in *Divinatio*, no. 15, 2002: 13-38.

⁴ See *FWT* 156; I am of course exaggerating just a bit here: one still speaks in Europe of the death penalty as a condition, for example, for entering the European Union and human rights groups often speak out against it as a violation of human rights.

⁵ Derrida continues: “Among other things, I recall the remarkable case of a nurse who had killed her two children by mimicking the legal method of putting to death (through lethal injection). She refused any pardon, so that she could “join [her] two children,” and requested lethal injection. This woman was executed. She was probably judged to be of sound mind” (*FWT* 158).

⁶ See *DP1b* 101 and 105 on Bush’s refusal to pardon a woman condemned to die by the death penalty in Texas. In *FWT* Derrida speaks of the United States as “a country that remains today the last Western ‘democracy’ with a largely Christian, or even Judeo-Christian culture, to maintain and to apply the death penalty on a massive scale, even

more intensely than before, despite certain more recent signs of disquiet or worry, even in what are called the most ‘death-prone’ states in the U.S.” (*FWT* 139). But as Derrida says later in the interview: “It is true that the manifestations of disquiet proliferating in the United States point less often to the principle of the death penalty than to the large number of ‘judicial errors’ that, under suspect and monstrously unequal conditions, lead to executions” (*FWT* 155). Derrida concludes that any eventual abolition of the death penalty in the United States will be the result not of a stand on principle but because of empirical reasons and doubts about the just execution of the penalty: “My feeling is that if one day the death penalty is abolished in the United States, it will be by a progressive movement, state by state, moratorium by moratorium, *de facto*, and not by a single federal decision” (*FWT* 157).

Derrida also notes that the condemned in the U.S. are given a right to speak before their execution and that their “last words are recorded and then circulated on the Internet. Indeed, there exists a veritable corpus of ‘last statements.’ And they are posted “on line.” The speech of the condemned is respected; the corpse is given to the family; and the traces are not hidden. There would be much to say on the question of the visual and audio archive of execution in the United States” (*FWT* 155). Derrida speaks also of the role of the media in this transformation of the spectacle of execution. “Visibility is thus deferred,” says Derrida, “so that “one should speak not simply of invisibility but of a transformation of the field of the visible” (*FWT* 159).

⁷ This will no doubt also mean that the seminar will be read and received rather differently in the U.S. than elsewhere—and very differently in the U.S. than in France and Europe. In the U.S. one will probably hear it as much more of an abolitionist plea on Derrida’s part, and while it is such a plea—for Derrida clearly says that he is *against* the death penalty and the seminar was surely motivated in large part by this heartfelt opposition—there must be something else going on when the first audience for the seminar would have taken the abolition of the death penalty as a given. In France and Europe more generally, then, it will have to be read less as a plea for an abolition to come and more as an analysis of the history of abolitionism and of a state of affairs where the death penalty has become, so to speak, a dead issue.

⁸ Derrida will suggest later in an analogous fashion—trying to think, yet again, a larger of containing category through a smaller or contained one—that we try to think the question of death through the question of the death penalty, and not the other way around (*DP1b* 126). Trying to understand the container on the basis of the contained is just one of Derrida’s many strategies evident in this seminar.

⁹ See *DP1b* 148, 168, 174; for Kant on the sanctity or dignity of life, a life beyond all phenomenal interest, see *DP1b* 6, 20, 57, 72, 79; for Kant on the categorical imperative of the death penalty, see *DP1b* 29, 169-171. As Derrida says in *FWT*: “This dignity requires that the guilty party be punished because he is punishable, without any concern for utility, without sociopolitical interest of any kind” (*FWT* 149). “This distinction between self-punishment and hetero-punishment: the guilty party, as a person and a rational subject, should, according to Kant, understand, approve, even call for the punishment—including the supreme penalty; this transforms all institutional and rational punishment coming from outside (*forensis*) into automatic and autonomous punishment or into the indiscernible confines of interior punishment (*poena naturalis*); the guilty party should acknowledge the reason of the sentence, he would have to acknowledge the juridical reason that gets the better of him and leads him to condemn himself to death. To follow this consequence to the end, the guilty party would symbolically execute the verdict himself. The execution would be like a *sui-cide*. There would be, for the autonomy of juridical reason, nothing but self-execution. It is ‘as if the guilty party committed suicide’” (*FWT* 150).

¹⁰ Even the guillotine will be read in terms of this gesture, a killing machine designed to reduce pain and suffering, to put to death in the most humane way possible (*DP1b* 60).

¹¹ Derrida says in a similar vein in *For What Tomorrow*: “This is why Albert Camus, though he was not entirely wrong, simplifies things somewhat on this point as on others, when, in his beautiful and courageous ‘Reflections on the Guillotine,’ he claims that the death penalty will not be able to survive in a secularized world, or that its abolition will occur through a humanist and atheist immanentism. Christianity has other resources of internal ‘division,’ self-contestation, and self-deconstruction” (*DP1b* 143). What Derrida

calls early in Session 6 of the death penalty seminar an “ambiguity” might be thought as just such a division, self-contestation, or self-deconstruction.

¹² As for this opposition between philosophers and writers, Derrida argues in *For What Tomorrow*: “Those who maintained a public discourse against the death penalty never did so, to my knowledge—and this is my provisional hypothesis—in a strictly *philosophical* way. They did so either as writers (Voltaire, Hugo, and Camus in France) or as jurists and men of the law (Beccaria...)” (*FWT* 147). He goes on: “If this massive and highly significant ‘fact’ can be proven, we then have to ask ourselves what *welds*, so to speak, philosophy and, more precisely, ontology, in their essence or, what amounts to the same thing, in the hegemonic tradition—what *welds* them, then, to the political theology of the death penalty and to the principle of sovereignty, which, through different figures, reigns there supremely and in a sovereign manner” (*FWT* 147). Derrida goes on to speak of this “welding of ontology to the political theology of the death penalty” in terms of a certain thinking of what is “proper to man”: “the proper to man would consist in his ability to ‘risk his life’ in sacrifice, to elevate himself above life, to be worth, in his dignity, something more and other than life, to pass through death toward a ‘life’ that is worth more than life” (*FWT* 147). Derrida evokes in this regard Plato’s *epimeleia tou thanatou*, Kant’s “incomparable *dignity* (*Würde*) of the human person, who, as an end in himself and not a means . . . transcends his condition as a living being and whose *honor* it is to inscribe the death penalty within his life,” Hegel’s struggle for recognition between one consciousness and another, and Heidegger’s *Dasein* “which alone can *properly* die and die its own death, so that according to Heidegger the animal merely comes to an end and ceases, etc.” (*FWT* 147). This brief history of Western philosophy read in terms of the sacrifice of life for what is worth more than life is illuminating. Derrida thus concludes: “The death penalty would thus be, like death itself, what is ‘proper to man’ in the strict sense” (*FWT* 147).

¹³ This notion of “phantasm” runs throughout the entire seminar, from Derrida’s early evocation of the “phantasmatico-theological” (*DP1a* 9) to his claim that control or mastery over the instant of my death is always a kind of phantasm—an effective phantasm, to be sure, but a phantasm nonetheless (*DP1b* 151-152).

¹⁴ Derrida thus refers, once again, to the United States in this regard, recalling “the immensity of the phenomenon of imprisonment (where the United States also holds records)” (*FWT* 154).

¹⁵ Similarly, even if the world were all of a sudden to become vegetarian, we would not be done with carno-phallogo-centrism, since this is not simply limited to the consumption of what is called animal meat; inseparable from logocentrism (where only man has logos) and phallogocentrism (where only man has access to the symbolic), inseparable even from the symbolic eating of flesh in religion, carno-centrism would not disappear with the abolition of meat eating.

¹⁶ If, as I have tried to argue, the theologico-political remains the prime target of this deconstruction, then Derrida seems to be suggesting that we must add to that long list of things that call out for deconstructive analysis—sovereignty, democracy, literature, work, international law, religious tolerance, cosmopolitanism, forgiveness, the death penalty, and so on—*deconstruction itself*, which has now been shown to have a Judeo-Christian heritage that needs to be reread and deconstructed. In the end, then, not even deconstruction comes out unscathed in this deconstruction of the death penalty.