THE PHILOSOPHY AND LITERATURE OF THE DEATH PENALTY: TWO SIDES OF THE SAME SOVEREIGN

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Abstract: This essay demonstrates that in his 1999–2000 Death Penalty Seminar Jacques Derrida pursues the deconstruction of political theology that he had been pursuing in a more or less explicit fashion for more than two decades. Derrida’s interest in the theme of the death penalty can be traced back in large part, it is argued, to the theological and essentially Judeo-Christian origins that Derrida finds in discourses both for and against the death penalty. This emphasis on the theological origins of the death penalty helps explain why Derrida spends much more time questioning the principles, rhetoric, and images of abolitionist discourses than pro–death penalty discourses. For Derrida, this essay concludes, a critique or deconstruction of discourses surrounding the death penalty is never more critical than in a putatively postreligious, secular age. In the end, Derrida hopes to provide what may be the very first philosophical abolitionist discourse, one that argues against the death penalty without relying on the language, tropes, symbols, and images of Judeo-Christian theology.

Jacques 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.

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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—and you really have to imagine because this almost never happens in reality—the governor’s mansion in Texas. There are even stage directions written into these opening pages of the seminar to control the pace or rhythm of the narrative: Derrida writes between sentences “silence,” “long silence,” 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?” (DP1, 1). It is at this point in his description 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” (DP1, 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 Derrida’s entire seminar. Derrida addresses 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, and so on. In retrospect, we should not have expected anything different. What is becoming more and more clear 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 con-

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1 Passages from the Death Penalty Seminars come from Peggy Kamuf’s draft translations. I use ‘DP1’ to refer to the first year of the Death Penalty Seminars, followed by the session number. The first year had eleven weekly sessions that ran from December 1999 to March 2000.

2 Derrida speaks near the end of the seminar of “the priests and the confessors ritually assigned to the last scene” (DP1, 11).
cepts is now long and impressive. It includes everything from a certain conception of democracy or cosmopolitanism to literature, work, the world, forgiveness (DP1, 2, 3, 10), even the concept of religion itself (which Derrida in “Faith and Knowledge” (1996) and elsewhere argues is inseparable from its Judeo-Christian and Latin origins). Even such seemingly modern, Enlightenment concepts or values as secularism and religious tolerance belong to this same theologico-political tradition. 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 needs no special interpretive skills to discern 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” (DP1, 7). In the two years he devotes to the death penalty, Derrida attempts to demonstrate that so many of the concepts, symbols, and images associated with the death penalty are marked in less obvious but no less determining ways by this same Christian or Judeo-Christian theologico-political heritage.

According to Derrida, the death penalty as the lawful or legally sanctioned putting to death of a citizen on the part of the state is inseparable from and unthinkable without this theologico-political tradition and its concept of sovereignty. Insofar as the death penalty is understood to be an exception to the right to life, it offers exemplary access to Schmitt’s claim that “sovereign is he who decides on the exception” (DP1, 3). What the death penalty reflects, reveals, or lays bare even better, perhaps, than all those other notions informed by the theologico-political is the exceptional status of state sovereignty, the right the state gives itself to decide on questions of life and death, on the right to put its citizens to death through the death penalty, or to force them to risk their lives through war (DP1, 1). Hence, on the second page of the seminar, Derrida speaks of “political theology and of the religion of the death penalty”

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3 Derrida even remarks parenthetically that the Chinese were in the process of celebrating the year 2000, proof that the Christian calendar had become a global one.

4 That the entire seminar aims to show, as I have just tried to argue, the relationship between the death penalty, literature, and the theologico-political can be seen in the reference to Schmitt right at the beginning of Session Four, where Derrida speaks of “the theological origins of the concepts of modern politics, notably of sovereignty (with reference to Schmitt).”

5 Derrida even suggests that the best way to understand deconstruction itself is through the death penalty. He writes, “Deconstruction is perhaps always, ultimately, through the decon-
(DP1, 1) and then a few pages later of “the properly theologicopolitical meaning of what is called the ‘death penalty’” (DP1, 1). Because discourses on the death penalty are marked by the theologicopolitical and by an essentially Christian discourse on the sovereignty of God, they must be subjected to scrutiny, especially when they come from what appear to be purely modern, secular, Enlightenment sources. Derrida demonstrates how every claim either for or against the death penalty borrows in some way from a theologicopolitical heritage informed by Christianity. Thus, the best way to understand the theologicopolitical and what has or has not changed about it within modernity is to begin, Derrida argues, with the question of the death penalty.

That Derrida’s emphasis was from the beginning the relationship between the political and the theological can be seen in the four historical cases he chooses to examine: Socrates, Jesus, Mansur al-Hallaj, and Joan of Arc. In all four cases, Derrida argues, we witness the condemnation of what is considered to be a divine speech (DP1, 1), the execution of a figure whose message was at once “theological and political” (DP1, 1). In each of these cases the state’s claim to transcendence is opposed not by a radically secular, theologicopolitical, or nonreligious discourse but by a claim to a counter-transcendence that is perceived by the state to be a threat. Similarly, Derrida goes on to show that the debate between critics and partisans of the death penalty opposes not a wholly secular, areligious, or antireligious position to a Christian one but, rather, two different sides of the same Judeo-Christian heritage. The question of the death penalty thus fits quite nicely into Derrida’s project to deconstruct this theologicopolitical heritage. That said, it is no doubt still legitimate and instructive to ask why Derrida would devote two entire seminars, those of 1999–2000 and 2000–2001, 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 abolished it or were preparing to do so. Questions of pardon, forgiveness, testimony, or the nature and scope of sovereignty in general 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’s asking pardon for the Inquisition, and he speaks elsewhere around this same time of the Truth and the Reconciliation Commission in South Africa and of debates on the construction of carno-phallogocentrism, the deconstruction of this historical scaffolding of the death penalty” (DP1, 1).

6 “The point in all four cases was to put to death a speech that claimed to be but the presentation of a divine speech to which the clerical-state authorities, the double power of the churches and the state, the twinned and conjugated power of the church and the state remained deaf—and intended very well to hear and understand nothing” (DP1, 1).

7 Derrida has a text from around this time entitled precisely “Peine de mort et souveraineté (pour une déconstruction de l’onto-théologie),” in Divinitio 15 (2002): 13–38.
over national and international sovereignty, and so on. But by 1999, the abolitionist debate in France and Europe had become something of a non-issue, a thing of the past, une affaire classée. It is true that the death penalty still had not been universally abolished and that in 1999, says Derrida citing the statistics of Amnesty International in For What Tomorrow (2004), 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 devote two years of his seminar to the question of the death penalty so seemingly late in the game?

One reason is surely the American context, which Derrida refers to regularly in the seminars, as well as his American audience, which he always seems to take into account, 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 United States, 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). The fact that many states within the Unites States still maintained and exercised the death penalty would be of central importance to Derrida throughout the seminar. But it is also not insignificant that this fact is interpreted by Derrida in 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 is of such interest to him (DP1, 8). The American context also provides Derrida with

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9 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).

10 See DP1, 8 and 9, on Bush’s refusal to pardon a woman sentenced to death in Texas. In For What Tomorrow, 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” (ibid., 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
prime source material for rethinking the whole question of cruelty through the American Supreme Court’s definition of cruel and unusual punishment, the question of anesthesia, of race in the unequal application of the death penalty, of the use of capital punishment on the mentally handicapped or on minors, 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.

We 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. There are, I would argue, deeper reasons for devoting a seminar to the death penalty in a country that had abolished it two decades earlier and in the middle of an entire continent that was on its way to abolishing it. Throughout the seminar, Derrida questions 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 asks whether some form of death penalty would not remain, even in places 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. And the same is perhaps true of the death penalty. In all of these cases, Derrida is trying to uncover the now hidden and often denied religious or theological origins of a certain conception of the human, of humanism, and of human rights, which made it 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, 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 cosmo-

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” (ibid., 157).
politianism, on democracy and religion, and, here, on the death penalty. While a certain death penalty—or a certain ritualized putting to death—will have of course 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. While Derrida in the opening sessions of the seminar makes 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” are, as we saw, decidedly premodern (Socrates, Jesus, Joan of Arc, and Al Halaj), the bulk of Derrida’s analysis focuses on Enlightenment thinkers (Cesare Beccaria, Kant), post-Enlightenment literary figures (Victor Hugo, Albert Camus, Maurice Blanchot), and the history of the death penalty in the United States. 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). For the better part of his seminar, Derrida restricts his analysis to this sphere of European law, along with the theology and philosophy that inform it.

To ask about the death penalty is thus another way to ask about the theologico-political notions that inform modernity and the Enlightenment (DP1, 11). We can ask what it was about the European Enlightenment that led it to produce these related discourses of abolitionism and secularism, or we can follow Derrida’s suggestion that “the death penalty is [perhaps] the best way to ask the question ‘What is the Enlightenment?’” (DP1, 7). 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 (DP1, 8). It would be through the death penalty—through an analysis of discourses both for and against it—that Derrida is able to expose “the double Christian root of both the death penalty and its abolition” (DP1, 6) as well as, 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—a radical secularism, say, 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

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11 Derrida will suggest later in an analogous fashion—trying to think, yet again, a larger or 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 (DP1, 9). Trying to understand the container on the basis of the contained is just one of Derrida’s many strategies in this seminar.
the abolitionist arguments and rhetoric against it. Because the theological origins of the death penalty itself are so obvious in thinkers such as Maistre, Derrida spends very little time on such pro–death penalty discourses, limiting most of his analysis to Kant, whose defense of the death penalty is, for Derrida, the most rigorous. Derrida thus spends much more time on the abolitionist writings of Hugo and, to a lesser extent, of Camus, in order to demonstrate how the former’s conception of natural law coincides with religious law or the law of Christ (DP1, 6, 7), that is, with a certain Christian humanism (DP1, 7, 8), and how the latter’s atheistic discourse conceals a very similar humanism.

This raises the further question of why Derrida treats so many writers or literary figures in this seminar. One answer would be simply historical: Hugo was an internationally recognized literary figure whose abolitionist writings were widely circulated and discussed not only in France but throughout much of Europe and the United States. He was an immense presence and a major force that figured prominently in the history of the death penalty. Percy Shelley, Camus, Charles Baudelaire, and William Wordsworth can hardly be called minor figures in this history. It is also the case, we might speculate, that it is in literature, in novels, plays, and today films, that we have the most powerful depictions of the death penalty, spectacular dramatizations that, arguably, have moved public sentiment more than all the well-reasoned and researched works of jurists, criminologists, or sociologists on, say, the ineffectiveness of the death penalty as a deterrent or the discriminations involved in its application. Derrida’s own dramatic opening would itself seem to testify to his belief that, in the debate over the death penalty, we need, not only arguments to change our thinking, but also words to move our hearts. Derrida turns to literary figures, it might be thought, because they are the ones who have portrayed in such a powerful and often moving fashion the drama surrounding death penalty cases, the cruel effects of its application, the possibilities of innocent people being condemned, and so on.

But throughout the seminar Derrida links the death penalty to literature in even more essential ways. He relates the question of the death penalty both to the figure of the writer or public intellectual who, and particularly in France, considers it his moral obligation to criticize existing law in the name of a higher or superior law, and to the nature of literature itself, particularly modern literature. Derrida detects both in this conception of the writer and in this view of literature a certain religious, essentially Christian rhetoric that is

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12 I say speculate here because certain opinion polls have suggested that public sentiment has not really changed all that much in the United States and even in parts of Europe and that if the question were put to a popular vote the death penalty would probably be retained in the former and might well be re instituted in the latter.
not necessarily to be rejected—Derrida never suggests that—but put into question. On the side of the writer, for example, who believes it his responsibility to listen to his conscience to discern a higher or superior law, a divine law, and on the side of literature itself, where the literary object in modernity comes to have an inviolable status conferred upon it by its creator, Derrida sees the marks of Judeo-Christian rhetoric, symbolics, and theology. Literature too, then, belongs, for Derrida, to that long list of notions considered to be remnants of a Judeo-Christian or Abrahamic lineage or tradition. Indeed, Derrida sees in the modern institution of literature—with its conception of the author as creator, with its understanding of the inviolability, almost the sacrality, of the written text, backed up by a whole system of rights and copyrights—a kind of relay or replacement for the unquestioned authority of sacred texts.

In the first year of the Death Penalty Seminars, Derrida comes to identify two camps within literature—within modern literature—and he continually plays the one side against the other: Baudelaire, Wordsworth, Jean Genet, and Blanchot, on the side of those favoring the death penalty or at least the logic behind it, and Shelley, Camus, and, especially Hugo, on the side of the abolitionists. He detects certain theological presuppositions that, when conjoined with a discourse on the death penalty and with a state apparatus that applies it, qualify as theologico-political. Hence, Derrida demonstrates the way in which the death penalty and literature, and literature or literary figures on the death penalty in an exemplary way, belong—and particularly in modernity—to the theologico-political heritage that Derrida pursued in almost all his work of the last couple of decades.

Literature would be related to the death penalty and the death penalty to the theologico-political, and especially to its core notion of sovereignty. Even when they think they are resisting this notion of sovereignty in an abolitionist discourse, certain literary figures would be unwittingly affirming it. Derrida thus analyzes at great length the various writings of Hugo and others on the

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13 While Genet does not explicitly endorse the death penalty, his glorification of it certainly does not put him on the side of the abolitionists. Derrida writes: “one cannot say that he condemns the death penalty when he sings of the condemned and recalls that they are the Christlike and fascinating heroes of prisoners, criminals, and evildoers. The death penalty can always, also, be reaffirmed and celebrated in the name of the literature and poetry linked to the possibility of evil, to the right to evil, to the right to death, to the right to death beyond life, to the Sadian tradition of cruelty that Blanchot spoke of, in short, to what might be called the flower of evil, the possibility of the poetic and poetic blossoming that ties the tradition of the *Flowers of Evil* to Our Lady of the Flowers...” (DP1, 5).

14 Blanchot’s case is more complex: while he does not come out explicitly in favor of the death penalty, a reading of “Literature and the Right to Death” (1948) certainly cannot be interpreted as opposing it. Though Derrida begins and ends Session Four on Hugo and spends nearly two thirds of his time on Hugo, there is also in this session an important reading of Blanchot’s “Literature and the Right to Death.”
death penalty in terms of their strategy, their rhetoric, and the principles that subtend them. The first thing to be said, then, about Hugo’s position in 1848 against the death penalty is that it was, precisely—even if it was always couched in Hugo’s uniquely powerful rhetoric—a principled position, a stand based on principle. As such it can be opposed to all those other nonprincipled stands against the death penalty, such as the one taken a hundred years later in 1948 in the United Nations Declaration of Human Rights, which allows nation-states to maintain the death penalty so long as they respect certain conditions, or the stand taken by the United States Supreme Court when it ruled in 1972 not against the principle of the death penalty but against its application when it is deemed to constitute “cruel and unusual punishment.” As opposed to these others, Hugo’s is a principled stand based on one core, central, inviolable principle: “the inviolability of human life as an inalienable property, as a right of property over one’s own life” (DP1, 4). Based on this principle to which Hugo claims to have privileged access but that is not recognized by law, Hugo asserts the writer’s right to defy or change the law (DP1, 4). It is in the name, then, of a higher law, a law above the laws, in the name of justice itself, perhaps, that Hugo claims to criticize and even attack the laws of France (DP1, 4).

Derrida thus finds in Hugo what he calls an ambiguous Christian axiomatics (DP1, 4). While Hugo wants to put an end to the death penalty and to the conception of sovereignty it implies, he wishes to do so through divine means: “the abolitionist instrument must be divine” (DP1, 4). Derrida concludes, “Hugo’s abolitionism is profoundly Christian, Christlike, evangelical” (DP1, 4), evangelical because Hugo is on a mission, a sacred, international mission, to spread the good word of abolitionism. It is the moral responsibility and the “unconditional right,” the “divine” and “sovereign right,” of the

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15 This language of criticizing or perhaps even deconstructing the law in the name of justice might make one wonder whether Derrida is not finding in Hugo a kind of precursor for deconstruction. It might indeed look at first glance as if Hugo, like Derrida, is criticizing or deconstructing law, the law of the state, on the basis of a “concept” or “ideal” of justice that exceeds all law. While Derrida will, of course, share Hugo’s position against the death penalty and share some of his rhetoric, the main difference between them will be the figure or accessibility of this conception of justice or of this law above the laws. As Derrida will read Hugo, Hugo believes he has access to this higher law within him, within his moral conscience, and he believes he knows that it is a divine law he is following and a divine mission he is on.

16 Derrida continues—and notice his emphasis on the internal, on moral conscience, etc.: “Whether it is a matter here of profound faith or of obligatory rhetoric or, as I believe, between the two, a matter of a moral conscience or of a discourse of moral conscience, of an inner conviction [for intérieur] that can be cultivated as an authority only in a Christian space, of an idea of man, of ‘human life,’ of the inviolability of life as human life that is fundamentally heir to and elementarily the offspring of a Christian family, a holy family, it remains that it is in the name of God and of a Christian God that the death penalty is going to be opposed” (DP1, 4; emphasis added).
author not to be limited by existing, nation-state laws but to criticize laws deemed unjust in light of this higher law (DP1, 4). But these references to a divine and sovereign right already indicate Derrida’s angle of attack in his reading of Hugo. What Hugo shares with the proponents of the death penalty is precisely this rhetoric of divinity and sovereignty. He condemns the law of blood for blood “by asserting divine law above human law” (DP1, 4), but he does so only by invoking in his own discourse the blood of Christ (DP1, 5). He condemns the human and barbaric laws of the Romans and Jews, but he does so only in the name of a divine law that bears all the traits of the incarnate law of Christianity (DP1, 4).

Derrida invokes a lineage of “men-writers in French literature, from Voltaire to Chateaubriand and to Hugo, [who] institute the responsibility and give themselves the sacred right to make the law above the laws, to make themselves the representatives of eternal justice above the law and thus of divine justice” (DP1, 4). Derrida seems to see in this appeal to a higher law another example of the theologico-political: an appeal to a divine law that has already spoken, a Christian law that one must simply open one’s heart to hear and so bring down to earth by opposing the death penalty. Even if this higher law must sometimes be turned against the Church, it would be no less Christian (DP1, 4); indeed, the claim might be that it is all the more Christian, a return to a more original Christianity (Voltaire) or to the true meaning of Christianity in the inviolability of human life, which would be at once the central lesson of the incarnation (Hugo) and the true Spirit of the French Revolution, a final rejection of barbarism and of the Terror.17

Derrida ends his analysis of Hugo by relating this appeal to a law beyond law to a certain notion of progress and an eternal justice that would be opposed to the transitory laws of one’s time (DP1, 4). Hugo not only calls on law to be criticized and improved but believes in a kind of historical progress of which he would be a part. The abolition of the death penalty would be a sign of this progress, an important sign in an essentially Christian teleology. That is what licenses Derrida to say that Hugo’s “abolitionist discourse is a revolutionary theodicy, a revolutionary Christian theodicy” (DP1, 4).18

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17 Derrida writes: “Just as one condemns a certain church, or even a certain political theology in the name of Christ, one condemns the guillotine or revolutionary terror in the name of true fidelity to the spirit of the French Revolution: the borderline of this right to literature thus runs through Christianity, it marks the divide between a good and a bad Christianity, between a Christianity that is faithful and one that is unfaithful to itself; this borderline, this line of demarcation, runs between several figures of the French Revolution” (DP1, 4).

18 After citing Hugo’s claim that the death penalty is “the special and eternal sign of barbarity” (DP1, 3), Derrida speaks at the beginning of Session Five of “the Christian teleo-theological character of the Hugolian interpretation of the history of humanity’s progress toward the abolition of the death penalty, and his revolutionary theodicy as revolutionary Christian theodicy.”
Once again, the opposition Derrida plays out in the Death Penalty Seminars is not between a discourse that justifies the death penalty through a reference to divine sovereignty and a purely secular, nonreligious discourse against the death penalty. It is, rather, a question of “[the] divine law of abolitionism against [the] divine law of the death penalty” (DP1, 7). 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 (DP1, 10, 11). 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 the sanctity of life and its call for the sacrifice of life (DP1, 6).

Not even among the abolitionists, then, 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 nonreligious, anti-Christian, or atheistic abolitionism (Camus) (DP1, 8). For Derrida, the discourses of both Hugo and Camus are Christian (DP1, 8, 10). As he argues in relation to the latter, “Christian monotheism is a humanistic immanentism... and Camus’s discourse... would be more Christian, more Christlike, than he thought” (DP1, 8). Though Derrida asks early in the seminar whether the abolitionist movement is Christian or a kind of atheist humanism (DP1, 3), he ultimately demonstrates that this is a false opposition insofar as humanism is in most of its incarnations essentially Christian.

It might be said that, for Derrida, the question of the death penalty is Judeo-Christian all the way down, on the side of both philosophy and literature, and, for this latter, on the side of both the proponents of the death penalty and the abolitionists. If Derrida spends so much more time with the abolitionist discourses than with those of the proponents of the death penalty,

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19 See DP1, 6, 7, and 8, for Kant on the sanctity or dignity of life, a life beyond all phenomenal interest; for Kant on the categorical imperative of the death penalty, see DP1, 6 and 11.

20 Even the guillotine is 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 (DP1, 7).

21 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” (at DP1, 10). What Derrida calls early in Session Six of the Death Penalty Seminars an “ambiguity” might be thought of as just such a division, self-contestation, or self-deconstruction.
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 already on the horizon—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, the deconstruction of these concepts remains to come, and it remains perhaps all the more urgent when it appears unnecessary or already completed, that is, in a secular age after the abolition of the death penalty.

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. Here as elsewhere, Derrida is attempting to deconstruct at once the theologico-political stakes of the discourses he is analyzing and the tendencies, 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 first session of the seminar: “No philosophy against the death penalty” (DP1, 1). This is no doubt yet one more reason for Derrida’s turn to literature and to the two camps within it, namely, that there is no similar division of camps in philosophy. There simply is no philosophy or philosopher who, as a philosopher, took a stand against the death penalty. Though literature has been divided on the death penalty, philosophy would have spoken in favor of it with a single voice. 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. There he speaks of this “most stupifying—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 (2005): “why are there so few democrat philosophers (if there have been any at all), from Plato to Heidegger?” and his claim in The Animal That Therefore I Am (2008) 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, antidemocratic, 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, and always a certain conception of sovereignty, at its center.

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

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21 Thus, even when the death penalty is opposed by writers (such as Hugo), the opposition is formulated on the basis of an emphasis on human life (as opposed to animal life). On the other side of the equation, there appears to be an intrinsic relation between democracy, a “poetic” thinking of the animal, literature as the right to say everything, and the critique or deconstruction of a certain conception of sovereignty (DP1, 2).

24 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 continues: “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” (ibid., 147). Derrida goes on to suggest that what “welds” this ontology to the political theology of the death penalty is a certain thinking of what is “proper to man”: “the proper to
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 and Heidegger’s claim that only \textit{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 \textit{not} to any other form of animal life. Derrida writes of a line of thought that would run from Kant and Hegel to Blanchot:

The dignity of man, his sovereignty, the sign that he accedes to universal right and rises above animality is that he rises above biological life, puts his life in play in the law, risks his life and thus affirms his sovereignty as subject or consciousness. A law that would refrain from inscribing the death penalty within it would not be a law; it would not be a human law, it would not be a law worthy of human dignity.\cite{DP1, 4}

According to this logic, life is what must be sacrificed in order for there to be law (DP1, 4). Neither Kant nor Blanchot (nor Baudelaire, for that matter) could imagine a code of law without the death penalty (DP1, 5).\textsuperscript{25} Sacrifice, self-sacrifice, death, and sovereignty must all be thought together in a discourse that is always either explicitly in favor of the death penalty or is at least amenable to its logic.

Derrida’s task in the Death Penalty Seminars is to show in each case how all these concepts and practices—death penalty, carnal-phallogocentrism, religion, and philosophy—form a system or a matrix, a structure or a structural ensemble. Without reducing any of these discourses to another, 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 is 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 happens to be against the death penalty, but a philosopher, maybe even the first philosopher, to provide a genuinely “philosophical” abolitionist dis-

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\item 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’ (ibid., 147).
\item For Kant, “the death penalty testifies to human dignity and the remarkable possibility that properly distinguishes man by allowing him to rise above life, and to do so by inscribing in his law the possibility of the death penalty” (DP1, 5).
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course, one that would not exclude, however, everything that has typically been excluded from philosophy, be it literature, history, philology, rhetoric, theatricality, or pathos—the reason or reasons of the heart. And Derrida provides an analysis that contributes to the larger deconstruction of the theologico-political and its notion of sovereignty that he had been pursuing for years and would continue to pursue right up to the end.

In the course of this first year of the Death Penalty Seminars, Derrida attempts both to criticize pro– and anti–death penalty discourses and to understand the underlying structure or logic of the death penalty beyond its merely juridical understanding. In other words, he tries to provide a “philosophical” and not just a legal definition of it. He 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” (DP1, 10). The scandal of the death penalty consists 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, such calculation is always a kind of phantasm of control or mastery over the event (DP1, 9, 10). 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 quite 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 practices, and can no longer be restricted to its legal definition, even if, as a committed abolitionist, Derrida believes one must criticize and 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, there would remain this differential structure of 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, for example, in the name or under

26 This notion of “phantasm” runs throughout the entire seminar, from Derrida’s early evocation of the “phantasmatico-theological” (DP1, 1) 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 (DP1, 10).
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 usually hesitates to call his work or his project an outright “deconstruction of Christianity,” to use the phrase of Jean-Luc Nancy, it is indeed a deconstruction of a certain theology or political theology that Derrida seems to have undertaken during the final 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* (DP1, 8) and its own deconstruction (DP1, 10), its own reinscription of concepts that leaves everything in tact—or else sublimes 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 mere biological life and the end of that life by reference to a beyond that posits an everlasting life beyond the phenomenal, temporal realm (DP1, 10). Hence, Derrida speaks in the Death Penalty Seminars of a “radically non-Christian deconstruction” (DP1, 10), 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” any of the Abrahamic religions, on which, he says, he has never ceased to meditate (FWT, 164). But since Christianity has itself carried out its own deconstruction of sorts, Derrida is calling for “a deconstruction of this deconstruction,” a deconstruction of this “Christian’ landscape of deconstruction” (ibid., 165), a “philosophical” deconstruction, therefore, of this Christian deconstruction, which would 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 and because it is easy to think that it belongs to a bygone age—the death penalty.27

27 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.