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The Death Penalty

VOLUME I



Jacques Derrida

*Edited by Geoffrey Bennington, Marc Crépon,
and Thomas Dutoit*

Translated by Peggy Kamuf

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(*very slowly*)

Today we are going to talk about the telephone.

We are going to talk on the telephone.

Hello, is that you? Hello, it's me, can you talk? Where are you? The way one asks today when using a cell phone. Where are you? Where are you calling from? That's the question. Where are you calling from? I'm on the road. Which road?

That's the question. Who calls from where? Who calls whom from the road, in this story, in what is a story, and on which road? Who asks if he can talk to whom?

When one does not want a seminar on the death penalty to be merely a seminar on the death penalty; when one would like to avoid its being just another discourse, and a discourse of good conscience, among people who, like us after all, will never be or believe they will never be executioners carrying out the sentence, or sentenced to death, or even the defense attorneys or prosecutors of those sentenced to death, or the governors or heads of state who wield the right of pardon, one must at least do everything one can to come as close as possible, in one's body, to those for whom the death penalty is the death penalty, effectively, in an effective way, concretely, undeniably, and cruelly threatening, in the absolute imminence of execution, and sometimes in the suspension of an imminence that can appear infinitely brief or last interminably (in the United States, this can go on, as in the case of Mumia Abu-Jamal, for up to eighteen years at least, eighteen years day after day and night after night). One must never stop thinking about this instant of execution, when there is no more beyond, or when the beyond remains the beyond, either the beyond of what awaits us after death, God or nothing, salvation or nothing, or the beyond from which the pardon [*grâce*] might still come, at the last second, the grace of the sovereign God or the sovereign

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pardon [*grâce*] of the governor to which the only link is the telephone line.¹ It's from the telephone that the life of the condemned one is today, but no doubt always has been, suspended.

It is of this telephone to the beyond that we are no doubt going to talk; it is on this telephone that we are going to talk and from which we will remain suspended, as we will each time that we attempt to think religion or the theologico-political apparatus of the death penalty. For example with Victor Hugo.

We return, then, once again to France and to Victor Hugo to attempt to specify both this question of cruelty where it still has, although no longer merely, the color of blood and the figure of the guillotine (the joint history, then, as I was saying the last time, of red blood and the guillotine, but also the confluence of human blood and the blood of Christ's Passion, which ought to lead us toward the great ambiguity of Christianity, in and beyond Hugo's exemplary text).

It will also be the question, this time, not only of literature but of philosophy. For we will ask ourselves how Hugo's Christian reference, as fundamental as it is for his abolitionist discourse, can be aligned with the reference to a law that is not historical but natural. How can this Christology harmonize with a grounding of the principle of the inviolability of human life in natural law, in a right to life that would claim to be natural, like the property of what we have that is most proper? Recall the letter that Hugo wrote, after the Commune, in 1871, to the attorney for the political prisoners condemned to death, in order to express his agreement, even as he spelled out the following—and here is the excerpt I read in conclusion last week:

The question that you see as a man of law, I see as a philosopher. The problem that you elucidate perfectly, and with an eloquent logic, from the point of view of the written law, is illuminated for me in an even higher and more complete light by natural law. At a certain level, natural law cannot be distinguished from social law. (250)

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We are going to make a big detour and take a long trip, today, before finally returning to this point of departure. How can Hugo ground his abolitionism in a natural law, an unwritten, non-positive, nonhistorical law—which cannot be distinguished from a social law—even as he constantly alleges all the same a kind of evangelical Christianity? Even as he points

1. [Translator's note]: In French, *grâce* is used both in the sense of divine grace and judicial or political pardon.

to the tortures of Christ? How can his permanent recourse to what he calls the inviolability of human life claim to ground itself both in a “natural” social law—natural, that is, ahistorical, unwritten, a law written only in the hearts of men and foreign to any historical revelation and, at the same time, then, in a Christian law? In other words, where does this law come from? From nature or from revelation? And let us not forget that the revelation in question is tied, in an essential way, to an incarnation and a sentencing to death of Jesus, which remains to be interpreted. How could an abolitionism ground itself on the example of a death sentence? And who, in the end, sentenced Jesus to death? The Jews? The Romans? Or God his father? How is one to organize this genealogical question, this genealogy of law? Of law in general, of penal law in particular, presuming that they can be distinguished here?

Starting from this, the reading we are going to attempt and the questions we are going to pose might, up to a certain point, be inscribed under the expanded sign of what Baudelaire calls, as you remember, *interest*.

What is an interest? The word itself is interesting, where it implies in Latin both the fact of finding oneself or of being in the middle, between, implicated in a space larger than oneself and, on the other hand, fiduciary calculation, surplus value, the search for a profit and a capitalization, in short, an economy—either monetary or psychological, the search for a greater well-being, for a greater good, one’s own good or one’s own well-being, an increase of enjoyment. What is an interest? What does it mean “to be interested,” “to be interested in”?

Baudelaire speaks of the interest of the abolitionist discourse, that is, of what the abolitionists are interested in, of their unspoken or unspeakable motivations, motives they hide or hide from themselves behind the ethical, political, or juridical motives and principles that they advance. One does not need to subscribe to Baudelaire’s theses or hypotheses to be interested in such interests, as in the interests and calculations, hidden or not, of the abolitionists and also of those who favor the death penalty.

The general question then becomes, who has an interest in what in this affair? Does one have the right to pose this question of *interest* or of fiduciary calculation when, on one side and the other, one claims to be looking in principle, and by principle, beyond calculation? Beyond all interest? To be sure, those in favor of the death penalty often put forward the argument of the deterrent example and thus the argument of a probabilistic calculation serving society’s interests. But we have glimpsed and we will confirm still further based on Kant that the affirmation of the *principle* of the death *penalty*, as pure juridical rationality, of the *jus talionis* as “categori-

cal imperative” of penal justice, can be advanced without reference to the least phenomenal, empirical interest, for the body of society or the nation. As imperative of justice, it must even be detached from any interest of this kind. Conversely, or reciprocally, abolitionist discourse claims to be driven by a pure principle, by the concern with putting life above any other value, and human dignity above any market, any price (dignity is not a price, Kant himself said, and it is in the name of dignity (*Würde*), of the dignity of man that transcends price or the *Marktpreis* that both the Kantian proponents of the death penalty as well as the abolitionists speak.² Even when he speaks, with reference to the *jus talionis*, of moral compensation (*moralische Vergeltung*), Kant does not introduce or claims not to introduce any phenomenal calculation, any arithmetic of penalties but only a pure equivalence between the absolute crime (*homicidium dolosum*) and the capital punishment, which deprives the murderer of the life of which he has deprived the victim. The *jus talionis* is not in principle, in law, a horrible vengeance, but the reference to an impersonal principle of reparative justice that, precisely, does not obey the subjective and egotistical and impassioned or impulse-driven interest of vengeance. No more than a tooth for a tooth, no more than an eye for an eye: this is the beginning of justice or right in talionic law).³

If we persisted in posing the question of interest in the two cases and to the two parties (abolitionist and anti-abolitionist), it would thus have the following form: what is the secret interest that drives these two discourses of absolute disinterest? What is the interest of these allegations of disinterest? And even—for you know that there is another resource in Kant, another concept of interest, what he calls an interest of pure reason that transcends empirical or pathological interest and has, by right, in principle, no relation with any phenomenal interest—so even, then, if we pressed our question to this point of radicality, what would be the unavowed interest behind *both* the alleged disinterest *and/or* the so-called pure interest of pure reason?

If I said that this is a Nietzschean-type question, it is because, as you know, one of the critiques of Kant by Nietzsche consists in rejecting the latter’s allegation regarding the disinterested character of the experience of the beautiful. We are dealing here with a chiasmus since Nietzsche attacks Kant, attacks a Kantian-type gesture alleging the disinterest that supposedly raises itself above life, that supposedly sacrifices the living, whereas it is according to a Kantian logic that Baudelaire suspects the interest that motivates abolitionists concerned with the inviolability of life and of the

2. Kant, *The Metaphysics of Morals*, p. 105.

3. The closing parenthesis has been added.

right to human life. Let's leave this chiasmus there and return to Nietzsche for whom there is always an interest hidden beneath this alleged disinterest, in particular beneath aesthetic disinterest.

204 One could cite numerous texts of Nietzsche on this subject. I will refer you only to the Third Essay in the *Genealogy of Morals* because there he evokes, in the name of life, the law that produces a hostility to life, but a hostility to life that is also an interest of life, an overwhelming [*renversant*] interest of life. Speaking (in section 11 of the Third Essay) of the ascetic priest and of asceticism in general, Nietzsche describes what he calls a "necessity of the first order that again and again promotes the growth and prosperity of this [the ascetic's] *life-inimical* species (*diese Lebensfeindliche Spezies*)"⁴ [Nietzsche underscores *Lebensfeindliche* because in question is a principle of death, in sum, a hostility to life, which is a movement that is both irreducibly necessary and immanent to life itself. It is life against life, life taking pleasure in life against life, counter-pleasuring in life (*contre-jouissant de la vie*). It is life that is hostile to life, that bears within itself this pathogenic or suicidal reactivity, this cruel violence toward itself, this self-flagellation, this self-punishment].⁵ And continuing to underscore, Nietzsche adds:⁶

It must indeed be in the *interest of life itself* that such a self-contradictory type [the ascetic] does not die out (*es muss wohl ein Interesse des Lebens selbst sein, dass ein solcher Typus des Selbstwiderspruchs nicht ausstirbt*; it must be an interest of life itself not to let perish such a type of self-contradiction, internal contradiction, contradiction turned against its own interest, against what is proper to it, in some way). (Ibid.)⁷

205 So hostility to life is inherent to life itself [*la vie même*], to the *itself* of life [*au même de la vie*], it is found right on life [*à même la vie*], and disinterest is still the symptom of a repressed interest. Nietzsche often uses the word

4. Friedrich Nietzsche, *Zur Genealogie der Moral*, in *Kritische Studien Ausgabe* (hereafter *KSA*), vol. 5 (Munich: Kritische Deutsche Taschenbuch Verlag, 1988), p. 363; *On the Genealogy of Morals*, trans. Walter Kaufmann and R. J. Hollingdale (New York: Vintage Books, 1989), p. 117; the closing quotation mark and parenthesis have been added.

5. The closing bracket has been added.

6. [Translator's note]: Derrida here announces "I quote first from a mediocre translation." The French translation in question is by Henri Albert, first published in 1900 and reissued in 1964 by Mercure de France.

7. During the session, Derrida here inserts the following commentary: "Such a type of self-contradiction cannot be allowed to die. Life has an interest in keeping the ascetic, where the ascetic or the ascetic type consists in contradicting itself, that is, of marking a life hostile to itself."

"repression," as you know. Since it would not be reasonable in the finite economy or strategy of this seminar to devote to Nietzsche all the room and the time that one nevertheless should, I will do no more than point you in *two directions*, still limiting myself to *The Genealogy of Morals*. These two intersecting directions would be those of *interest* and of *cruelty*, or even of the interest of cruelty, the interest in cruelty, *Grausamkeit*.

As for the notion and the word "interest," a little before what I have just quoted (in section 6 of the Third Essay), and still in order to attack Kant's discourse on disinterest and its legacy in Schopenhauer, Nietzsche contrasts Stendhal to them (he praises Stendhal everywhere, in particular in the preceding book *Beyond Good and Evil*, and in particular in the eighth part, section 254, a passage I choose because, although in it Nietzsche praises France as the "place of the most spiritual and sophisticated culture in Europe"⁸ and although he recognizes in Henri Beyle an expert in *voluptate psychologica*, a "remarkable, anticipatory forerunner [who] ran with a Napoleonic tempo through *his* Europe, through several centuries of the European soul, as a pathfinder and discoverer of this soul. It took two generations to somehow *catch up* with him" (146), by contrast, at the beginning of the same passage, he sees a sign of France's decline into the stupidity and vulgarity of bourgeois democracy in the recent funeral of Victor Hugo during which, says Nietzsche, France indulged in "a veritable orgy of bad taste and vacuous self-satisfaction (*eine wahre Orgie des Ungeschmacks und zugleich der Selbstbewunderung gefeiert*)" (145; *KSA*, 198). Remember this motif of the festival; we will find it again elsewhere, when it is a question of a festival of cruelty, on the contrary). In section 6 of the Third Essay of the *Genealogy*, then, Nietzsche declares that in the famous Kantian definition of the beautiful, one detects a lack, the lack of a subtle self-experience (of a vigilant self-analysis, basically): *der Mangel an feinerer Selbst-Erfahrung*—and that this lack resembles a worm, a fat worm within the self, the fat worm of fundamental error. Recalling the animal is always essential, and for good reason, in these Nietzschean genealogies. What has the animal form of this fat worm of fundamental error (*Gestalt eines dicken Wurms von Grundirrtum*) is saying, as Kant does: "That is beautiful . . . which gives us pleasure *without interest* (*Schön ist, hat Kant gesagt, was ohne interesse gefällt*)" (104; *KSA*, 347). And Nietzsche exclaims: "Ohne Interesse!" "Without interest! Compare with this definition one framed by a genuine 'spectator' and artist (*ein wirklicher "Zu-*

8. Nietzsche, *Jenseits von Gut und Böse*, in *KSA*, vol. 5, p. 198; *Beyond Good and Evil: Prelude to a Philosophy of the Future*, ed. Rolf-Peter Horstmann and Judith Norman, trans. Judith Norman (Cambridge: Cambridge University Press, 2002), p. 145.

207 *schauer*": in quotation marks since, precisely, the artist is not an impotent or passive spectator; he takes pleasure) — Stendhal, who once called the beautiful *'une promesse de bonheur'*" [in French in Nietzsche's text; don't forget that the preceding essay, which concerns both debt and law, and punishment and cruelty — I am coming to that — begins with a kind of treatise on the promise]. The end of section 6 of the Third Essay takes up again Stendhal's formula but within a new development that would interest us more because it links the remark to the double motif of torture and sexuality. Nietzsche recalls that Schopenhauer insists on the "calming," soothing effect on the will (*Willenkalmernde*) of aesthetic feeling and of the beautiful. The beautiful would be, basically, an anesthetic, a sleeping pill, or rather a tranquilizer of the will. The aesthetic would be anesthetic. This is the point of view of the spectator to which Nietzsche opposes once again the point of view of the creative artist, and elsewhere the cruelty of the artist (*die Künstler-Grausamkeit*) and once again of Stendhal whose constitution is no less sensitive or sensual (*nicht weniger sinnliche*) but happier than Schopenhauer's, the Stendhal who said, precisely, that the beautiful promises happiness (this time in German: *das Schöne verspricht Glück*). For Stendhal, Nietzsche comments, what counts is the "arousal of the will" "Erregung des Willens" (105; *KSA*, 349), that is, the complete opposite of insensitivity, anesthesia, or a tranquilized will. And at that point, Nietzsche reverses things: he accuses Schopenhauer of not having understood the true motive, true movement, and motivation of Kant whom he nevertheless claims to be following, the motivation hidden behind the motifs of disinterest that go well beyond the beautiful and that concern, basically, every categorical imperative (for the proper trait of a categorical imperative is to command beyond empirical or pathological interest in Kant's sense; and this should be true in particular of that categorical imperative of penal justice that, as we saw last week, the death penalty is, a death penalty that should then also be disinterested, according to Kant, pure of any calculation). So I was saying, at that point, Nietzsche reverses things. He accuses Schopenhauer of not having understood the true motive, true movement, and motivation of Kant whom he claims to be following, the motivation hidden behind the motifs of disinterest, namely that Kant does finally have an interest behind the alleged disinterest and it is "the greatest and most personal interest (*allerpersönlichsten Interesse*)," "that of a tortured man who gains release from his torture (*Interesse . . . des Torturierten, der von seiner Tortur loskommt*)" (105–6; *KSA*, 349).

Nietzsche's conclusion: the ascetic ideal that inspires Kant and Scho-

9. [Translator's note]: A promise of happiness.

penhauer consists in this: *von ein Tortur loskommen*, gaining release from torture. If one transposes this logic of an always hidden "personal" interest onto alleged disinterest, if one transposes this interested disinterest from aesthetics to penal law, one meets up again, down to the words themselves, with Baudelaire's denunciation, but this time turned back against a proponent of the death penalty as categorical imperative. In other words, the same argument, the same objection (your disinterest, your nobility of soul, your loftiness, your ethical pretension is a mask, the mask of an actor who hides interested calculation), this same unmasking of a masquerade can concern the Hugolian abolitionist for Baudelaire just as much as the Kantian or Schopenhauerian "moralist" (as one sometimes says, I believe in the juridical code) for Nietzsche. Just as much as the abolitionist, the proponents of the death penalty as categorical imperative are afraid for themselves; they seek to gain release from a sentencing or a threat of a verdict — and from the torture that this threat constitutes.

208 It would be necessary to link this filiation, this misunderstanding in the Kantian filiation of Schopenhauer and of his disinterested asceticism, to a theory of music that I would have liked to gloss, if I had the time, according to two motifs: *sovereignty* and the *telephone*. Sovereignty, which we are insisting on here for the reasons you know and that I will not recall; the telephone because there is a figure here of what I will call the technics of transcendence, and, what is more, the technics of this teleferic relation to the sovereignty of the absent other, of the absent God — we would find an illustration of this in the telephonic apparatus that, in the United States, links until the last moment the one sentenced to death whose execution is imminent, or even already under way, at the stage of the anesthetizing injection, that links, then, the place of execution to the mouth and the ear of the sovereign governor, keeping it in tele-technic relation with the transcendent place of sovereignty, with the governor who holds the quasi-divine power of pardoning. Well, what does Nietzsche say about the sovereignty of music and the telephone apropos of Schopenhauer and then Wagner?

It is at the end of section 5 of the Third Essay of *The Genealogy of Morals*. Linking the ascetic ideal of disinterest to Wagner and then, or first of all, to Schopenhauer, he sees in the ascetic ideal a decisive influence of Kant on Schopenhauer and of Schopenhauer on Wagner when the latter, Wagner, changed in some sense his concept, his interpretation, his strategy of music. Up until then music was for Wagner a means, a medium, a "woman" Nietzsche even notes in quotation marks (*ein "Weib"*), a woman who, to be fruitful, increase, bear children, needed a goal, namely, a man, that is to say, she needed drama. Following Schopenhauer, Wagner then understood that

209 there were better things to do in *majorem musicae gloriam*, namely with “die Souveränität der Musik” (sovereignty is underlined by Nietzsche, who thus clearly signals that it is the divine omnipotence of music that governs this conversion). The sovereignty of music is then related, like all sovereignty, to the absolute power of the will, to the will as all powerful, to the sovereign essence, in short, of what is called the will (and this pure, absolute voluntarism is also a Kantian legacy): pure will, sovereign music as pure will, not as a representation or reflection of phenomena, an imitation of the phenomenality of phenomena (*Abbilder der Phänomenalität*), but as language of the will (*Sprache des Willens*; Nietzsche underlines the “of,” *des*: it is the language of the will, subjective genitive, it is the will itself speaking of itself, music, music speaking music to itself, that is its sovereignty). And you are going to see how, moving from this language of music as language of the will to the language of metaphysics, all of this speaking, in short, the same language, one moves from this sovereignty of willing to the telephone with the transcendence of the absolute sovereign, the telephone call exchanged with God, with the beyond, through the musician who is also an oracle, a priest, a mouthpiece for the in-itself of things, a ventriloquist of God (*Bauchredner Gottes*) who, on the telephone, “speaks metaphysics” (*er redete Metaphysik*, speaks in metaphysics, speaks the language of metaphysics, speaks in the language of metaphysics, *er redete Metaphysik*), and this metaphysical idiom is a telephonic language, the telephonic language of the asceticism that rises above sensible or sensual touch—or at least subtilizes it, by a ruse, to the point of giving it back to itself [*se le rendre*] by telephone, to the point of bringing [*se rendre*] the distant close to oneself, and the mediate immediate, and the transcendent immanent by the grace of the telephone, of a telephone that is the language of music, and of God speaking himself to himself, at will. If the ascetic’s ideal is deprived or deprives itself of the enjoyment of the senses and the body, he still has the ability to take pleasure [*jouir*] on the telephone, while speaking with God, with the sovereign beyond, with the other sovereign, with the other as sovereign, in the language of metaphysics, by harmonizing himself with the language of metaphysics, by according himself the language of metaphysics, of the metaphysics of the will on the telephone, and at will.

210 As if the telephone then became portable and cellular.

Telephony is metaphysics; it is religious, sacrificial, asceticism itself, the priesthood itself. But obviously, this ascetic renunciation renounces nothing; it is yet another ruse of the ascetic in order to take pleasure; it is the pleasure of the priest, who knows what he is talking about and how abstinence causes desire to grow and intensify and sharpen, the pleasure of desire, enjoyment

[*jouissance*] as enjoyment right on [*à même*] desire. I read these few lines (section 5 of the Third Essay):

He [Wagner] grasped all at once that with the Schopenhauerian theory and innovation *more* [*mehr*: underlined] could be done in *majorem musicae gloriam* [this more, don’t forget, will be sovereignty on the telephone and at will in place of music as woman]—namely, with the theory of the *sovereignty* of music [*nämlich mit der Souveränität der Musik*: sovereignty underlined] as Schopenhauer conceived it: music set apart from all the other arts, the independent art as such (*die Unabhängige Kunst an sich*), not offering images (*Abbilder*) of phenomenality as the other arts did, but speaking rather the language of the will itself (*vielmehr die Sprache des Willens selbst redend*), directly out of the “abyss” (*unmittelbar aus dem “Abgrundes” heraus*) as its most authentic (*eigenste*), elemental (*ursprünglichste*), nonderivative revelation. With this extraordinary rise in the value of music which appeared to follow from Schopenhauer’s philosophy, the value of *the musician* himself all at once went up in an unheard-of manner, too; from now on he became an oracle, a priest, indeed more than priest, a kind of mouthpiece of the “in-itself” [or of the essence] of things (*eine Art Mündstück des “An-sich” der Dinge*), a telephone from the beyond (*ein Telephon des Jenseits*)—henceforth he uttered not only music, this ventriloquist of God—he uttered metaphysics: no wonder he one day finally uttered *ascetic ideals*. (103; *KSA*, 346)

211 You notice that I am interpreting here texts of Nietzsche that are not concerned directly with and do not literally mention the death penalty, but that unmask an all-powerful interest hidden behind the discourse of disinterest of the Kantian type, which elsewhere, as we had begun to see, conditions the legal doctrine of the death penalty. What authorizes me to do this—besides the inseparable couple of interest and disinterest, the interest *in* disinterest, the interest taken in disinterest, the interest *of* disinterest—is the allusion to torture and punishment, and thus, I am coming to it now, to a logic of cruelty (torture, punishment), of the relations between the cruelty of life and the law, a logic that, as you know, governs in particular the whole preceding essay, the Second Essay in *The Genealogy of Morals*, on wrong or guilt (*Schuld*), bad conscience, and what resembles them. I invite you to reread everything that concerns the promise, memory, responsibility (*Verantwortlichkeit*), and especially the origin of the right to vengeance, punishment, penal law.

Since our question for the moment is also, what is cruelty? one sees unfold there a philosophy of cruelty, the philosophy of a cruelty that, in sum, has no contrary. There are to be sure differences among several modes or different degrees of intensity of cruelty, between an active cruelty and a reactive cruelty, but there is no opposition between cruelty and non-cruelty.

As a result, in this logic of the differential of cruelty rather than of the opposition between cruelty and non-cruelty, there is no true, original place for a debate for or against the death penalty. Both postulations can find inspiration in Nietzsche's discourse. Life is—it owes it to itself to be—cruel wherever it keeps itself, wherever it keeps the memory and even, I will add, the truth of itself. This means, it seems to me, that in these pages where, as you will hear, it is a question of torture, torment, terrible punishments, the question of the death penalty does not have an original place; it is named only once in a series of tortures or spectacles of cruelty. From these pages can be drawn, equally well and as one wishes, an abolitionist doctrine or its contrary. The death penalty, I repeat, has no originality; putting to death is a degree of torture and a strategy in cruelty, which requires one to interpret it in a non-judicial fashion, as it were, since this whole essay and this whole book are genealogies of law and of penal law that go back to movements of animal-human life that are prehistoric or in any case anterior to law, older and more profound, more irreducible than law itself and always ready to leave undeniable symptoms in the law itself. The cruelty of putting to death is not a matter for law. And finally—here is the passage at which I wanted to arrive, after a few preliminaries—Nietzsche is going to accuse Kant and the categorical imperative of cruelty (*Grausamkeit*), a cruelty that does not speak its name, a hypocritical cruelty that gives itself airs of keeping its hands clean [*de n'y pas toucher*], a cruelty (I will insist on this before picking up again the trace of red blood in Hugo) that has the odor of blood and torture, on a ground soaked in blood. In the same movement, Nietzsche is going to name the pleasure taken from causing suffering. Beginning in section 3 of this Second Essay, Nietzsche links the question of memory to that of suffering. And, as with the telephone, the technical dimension is not absent, it <is> even named. The question is: how to make a memory for the man-animal (*Menschen-Tiere*)—and Nietzsche's point of departure consists in not dissociating, not forgetting the beast in man—how to make him remember. A very old problem (*Uralte Problem*), Nietzsche notes, that has not received very gentle, very mild (*Zarten*) answers. Nothing is more terrifying and *unheimlich* in the prehistory of man than his *mnemotechnics*. (Nietzsche underlines this word, *Mnemotechnik*, in order to underscore that archivization and recollection engage the suffering body in a machine, in a technical repetition.) It is thus indeed a history or rather a prehistory of cruelty: to remember, to imprint the memory, one causes suffering, one must cause suffering; here is where the red appears, the red of fire before the red of blood: a thing is applied with a red-hot iron to imprint it on the memory (and this whole text is written according to the figure of impression, of the painful inscription in the body: "Mann brennt etwas ein, damit es im Gedächtnis

bleibt," something is burned, something is made red hot by penetrating until it draws blood so that it remains in memory). And Nietzsche specifies what is then the universal law that he wants to recall here, the law that links memory to pain, wound, trauma: "only that which never ceases to *hurt* stays in the memory (*nur was nicht aufhört, wehzutun, bleibt im Gedächtnis*—and Nietzsche underlines *wehzutun*)" (61; *KSA*, 295).

It is an entire reading of history and culture, of law and religion, that Nietzsche submits to this natural and zoological principle of cruelty, of the *causing-to-hurt, causing-to-suffer* so as to remember. With the result that punishment is not first of all a juridical apparatus; it is a movement of life, a writing of life so as to remember, to inscribe, imprint the past in its body.

Nietzsche goes so far as to say that wherever there is some gravity in the life of men and peoples (for obviously this is also a biopsychology and a biopolitics of peoples), wherever there is solemnity, celebration, festival in short (*Feierlichkeit*: and I insist on this once more because the motif of the cruel festival, of the theater of cruelty that is deployed during the tortures of punishment is at the heart of this essay, the festival as a serious thing, the most serious thing there is; the values of *Ernst* and of *Feierlichkeit* go together: one doesn't laugh at the festival, one isn't having fun [*on n'est pas à la fête*]; one suffers and causes suffering in order to take pleasure [*jouir*]), wherever there is some solemn, ritual feast, wherever there is some secret or mystery (*Geheimnis*), well, there then remains or comes back (*nachwirkt*, says Nietzsche underlining aftereffect, remainder effect) a remainder of the fear (*Schrecklichkeit*) that formerly presided over all the acts of memory, promises, engagements, oaths. And in the passage I am going to read, you will see all religions in general defined as systems of cruelty, *Systeme der Grausamkeit*, with the result that cruelty is no longer just one part among others of the mechanism of psychobiology; it is the essence of life, insofar as it keeps itself, insofar as, at the same time, it protects and keeps itself in memory in its truth; and it can, of course, in sacrifice and death, lose itself in order to keep itself. Life knows how to make itself suffer in order to keep itself, and to keep itself from forgetting, to keep itself in memory. For all of this is, of course, an interpretation of sacrificiality. (Read Second Essay, pp. 70–72 C)

One might even say that wherever on earth solemnity, seriousness, mystery, and gloomy coloring still distinguish the life of man and a people, there *remains* something of the terror that formerly attended all promises, pledges, and vows on earth: the past, the longest, deepest, and sternest past, breathes upon us and rises up in us whenever we become "serious." Man could never do without blood, torture, and sacrifices when he felt the need to create a memory for himself; the most dreadful sacrifices and pledges (sacrifices of the first-born among them), the most hideous mutilations (castration, for

example), the cruelest rites of all the religious cults (and all religions are at the deepest level systems of cruelties)—all this has its origin in the instinct that realized that pain is the most powerful aid to mnemotechnics.

In a certain sense, the whole of asceticism belongs here: a few ideas are to be rendered inextinguishable, ever-present, unforgettable, “fixed,” with the aim of hypnotizing the entire nervous and intellectual system with these “fixed ideas”—and ascetic procedures and modes of life are means of freeing these ideas from the competition of all other ideas, so as to make them “unforgettable.” The worse man’s memory has been, the more fearful has been the appearance of his customs; the severity of the penal code provides an especially significant measure of the degree of effort needed to overcome forgetfulness and to impose a few primitive demands of social existence as *present realities* upon these slaves of momentary affect and desire.

We Germans certainly do not regard ourselves as a particularly cruel and hardhearted people, still less as a particularly frivolous one, living only for the day; but one has only to look at our former codes of punishments to understand what effort it costs on this earth to breed a “nation of thinkers” (which is to say, *the* nation in Europe in which one still finds today the maximum of trust, seriousness, lack of taste, and matter-of-factness—and with these qualities one has the right to breed every kind of European mandarin). These Germans have employed fearful means to acquire a memory, so as to master their basic mob-instinct and its brutal coarseness. Consider the old German punishments; for example, stoning (the sagas already have millstones drop on the head of the guilty), breaking on the wheel (the most characteristic invention and specialty of the German genius in the realm of punishment!), piercing with stakes, tearing apart or trampling by horses (“quartering”), boiling of the criminal in oil or wine (still employed in the fourteenth and fifteenth centuries), the popular flaying alive (“cutting straps”), cutting flesh from the chest, and also the practice of smearing the wrongdoer with honey and leaving him in the blazing sun for flies. With the aid of such images and procedures one finally remembers five or six “I will not’s,” in regard to which one had given one’s *promise* so as to participate in the advantages of society—and it was indeed with the aid of this kind of memory that one at last came “to reason”! Ah, reason, seriousness, mastery over the affects, the whole somber thing called reflection, all these prerogatives and showpieces of man: how dearly they have been bought! How much blood and cruelty lie at the bottom of all “good things”! (61–62)

All of this is, as always with Nietzsche, highly interesting. Interesting as the interest there always is in thinking about interest. The complication and the interest of the Nietzschean gesture, an interest that one can take in it even if one does not subscribe to his utterances or his conclusions, what makes Nietzsche so *interesting* (as he himself says, at the opening of *The*

Genealogy of Morals, that the English psychologists to whom he is indebted, to whom he wants to say “thank you”—do not forget this recognition of debt—are themselves interesting [*sie selbst sind interessant!*] and they are interesting because they are preoccupied with making apparent the “shameful part” of our internal world [“*partie honteuse*”¹⁰ in French in the text to play on the figure and the sexual origin of this shame] (24), what makes Nietzsche interesting, then, like the English psychologists to whom he is indebted and whom he thanks, whom he pays back with interest, what makes Nietzsche interesting there where he is interested, whether or not one agrees with what he says, is that he suspects and sniffs out the *partie honteuse*, the modestly hidden or negated interest, both in those who advocate interest and in those who allege disinterest, and among the latter both in the abolitionists and in the anti-abolitionists, for example in Kant, who attempts to raise the categorical imperative of the death penalty above the calculation of interest but in the name of another rationally and morally pure calculation, the principle of equivalence, the *jus talionis* between the crime and the punishment, between the injury and the price to be paid.

Nietzsche deems this idea of *equivalence* at once mad, unbelievable, inadmissible, and he wants to retrace its genealogy. In the course of the long and insistent geneses of punishment that he proposes and to which I must refer you, he comes back first to a psychology of primitive humanity that he claims has survived in us moderns. It is to this archeology of law and of the law of punishment that Nietzsche devotes himself, obviously. During the longest period of human history, one did not punish because one held the wrongdoer to be responsible (*verantwortlich*, section 4, 2 [64; *KSA*, 298]), one did not acknowledge that only the guilty one should be punished. In this primitive humanity, which survives in us, one punished the way one punishes children when driven by anger. But at a given moment this anger comes to be contained within certain limits; it comes to be repressed and modified by the idea that every injury has its equivalent (*Äquivalent*), and that it can be compensated in a calculable fashion (*abgezahlt werden könne*), be it through some pain that would affect the author of the injury. Nietzsche’s archeo-genealogical question, which is in short the question of the origin of law, and of penal law, as origin of a calculation, a rule of calculation, Nietzsche’s question is then: whence comes this bizarre, bizarre idea, this ancient, archaic (*uralte*) idea, this so very deeply rooted, perhaps indestructible idea, of a possible equivalence between injury and pain (*Schaden und Schmerz*)? Whence comes this strange hypothesis or presumption of

10. [Translator’s note]: A dated expression for the genitalia.

an equivalence between two such incommensurable things? What can a wrong and a suffering have in common? Obviously Nietzsche's very legitimate question is that these are things of such heterogeneous quality that there cannot be, there should not be, any possible equivalence, any common measure between a wrong or an injury, on the one hand, and on the other, the suffering inflicted by a punishment. Nietzsche's response consists then in seeking the origin of this unbelievable equivalence, this unbelievable *justitiam*, in which it is not possible to believe, to which it is not possible to grant the least credit, to seek the origin of this unbelievable and uncreditable equivalence and to find it in, precisely, credit, in commerce, exchange, sale, trafficking, and so forth. The origin of the legal subject, and notably of penal law, is commercial law; it is the law of commerce, debt, the market, the exchange between things, bodies, and monetary signs, with their general equivalent and their surplus value, their interest. This would mean, in sum, that what *makes us believe*, credulous as we are, what makes us believe in an equivalence between crime and punishment, at bottom, is belief itself; it is the fiduciary phenomenon of credit or faith (*Glauben*). The origin of the belief in equivalence, that is, in penal law, the origin of our belief in penal law, the origin of the credit we grant it or that in truth we believe we must grant it, is belief itself. It is because we believe (always in a dogmatic fashion, always in a credulous fashion); it is because we grant credit that we believe in some equivalence between crime and punishment. But this belief does not consist only in believing in what we believe to be or to be true, but in believing by posing, performatively, by inventing an equivalence that does not exist, that has never existed, and that will never exist between crime and punishment, a convenient equivalence but a fictive one in short, which allows us both to believe and to exchange signs and things, signs and affects (elsewhere Nietzsche speaks of a semiotics of affects), which allows us to speak, to exchange things, words, signs, to commerce, in short, to engage in commerce, to contract loans and debts.

Nietzsche's astonishment is at its core very healthy and very trivial, very vital. Whom will one ever make believe, seriously, in what precisely we believe or pretend to believe, whom will one ever make believe what we affect to believe, namely that there exists some sort of common measure, some homogeneity, some homology, some common value, some equivalence, for example, between murder and the death penalty (but Nietzsche doesn't take this example; he speaks of punishment in general)? Whom will one ever make believe, seriously, in what we believe or feign to believe, in what we claim to believe, namely, that there exists some common measure between a

homicide and the death of the criminal, between the presumed murder and the execution of the criminal, and that the one can measure up to the other, that the one can take the place of the other, that the one can surrender itself in place of the other, substitute for the other as its equivalent? At bottom, no one believes <it> or has ever believed it seriously. No one can believe in the very thing one pretends to believe and pretends to credit. The caustic force of the Nietzschean genealogy consists finally in saying something like this: at bottom, we do not believe; we do not believe even in what we believe or say we believe; we do not believe in what we pretend and affect to believe or to credit in order to make the market possible, to make commerce, contract, exchange, and finally language possible and thus a social contract, a law that is always first of all commercial law.

By pushing this logic as far as the example of the death penalty, which Nietzsche does not talk about directly or only very little, in this context where it is a question only of punishment in general, legal subjects, and penal law in general, [by pushing this logic as far as the example of the death penalty, then], we would say that the death penalty is an article of law or an article of faith of commercial law, the market, trafficking, what Nietzsche will call *Kauf, Verkauf, Tausch, Handel und Wandel*.

Nietzsche wonders, at the end of section 4 of the Second Essay:

And whence did this . . . idea draw its power (*Macht*)—this idea of an equivalence between injury and pain (*die Idee einer Äquivalenz von Schaden und Schmerz*)? I have already divulged it: [it has drawn its power] in the contractual relationship (*in dem Vertrags-verhältnis*) between creditor and debtor (*Gläubiger und Schuldner*), which is as old as the idea of "legal subjects" (*Rechtssubjekte*) and in turn points back to the fundamental forms of buying, selling, barter, trade, and traffic (*Kauf, Verkauf, Tausch, Handel und Wandel*). (63)

What must be properly and well *analyzed*—I say *well analyzed* because it's a matter of analysis and thus of internal dissociation, element by element—what must be well analyzed in this logic of the Nietzschean argument, beyond even what Nietzsche himself says or means to say about it explicitly, is this strange and troubling, *unheimlich* concept of belief or credit, of the act of faith, of trusting, or rather this concept of the believer (*Gläubiger*), of the believing subject who does not believe, of the believing subject who is both believing, credulous, and yet who does not believe in what he believes he believes, and who thus divides his own belief, affects to believe, simulates belief, this simulacrum being in some way a part of belief

itself, the fiction of this simulacrum belonging to the very structure of what we call credit or belief. To believe is this strange divided state or this strange divided movement, quasi-hypnotic, in which I am not myself, in which I do not know what I know, in which I do not do what I do, in which I doubt the very thing I believe or in which I believe. Believing, in sum, is not believing; to believe is not to believe. And the whole origin of religion, like that of society, culture, the contract in general, has to do with this nonbelief at the heart of believing. Skepsis, skepticism, incredulity, *ἔποkhē*, all these suspensions of belief or of *doxa*, of the opining of opinion, of the “saying yes to,” are not accidents that happen to believing; they are believing itself. Believing is its own contrary and thus it has no contrary.¹¹ Not to believe in it is not the contrary of believing, of trusting, of crediting, of having faith. This is the essence of the fiduciary and of interest. And the market, exchange, the social contract, the promise, the whole system of supposed equivalences that ground money, language, law as well as penal law; all of this presupposes this trafficking in the act of faith, in believing, which is also believing without believing as condition of trafficking. I was saying that this internal division, this properly analytic dissociation, this cleavage, this split of believing haunted by nonbelief is almost quasi-hypnotic, one might say spectral, quasi-hallucinatory, or unconscious.

This leads us little by little to a reevaluation of both Christianity’s and Kant’s categorical imperative, of the bloody or bloodthirsty cruelty of the categorical imperative.

I insist on these two points for obvious reasons, in particular because I would like to prepare a return to the ambiguous Christianity of Hugo’s abolitionism and the questions it poses, while at the same time treating these questions in closest proximity to those of blood and cruelty.

In section 5 of the Second Essay, Nietzsche explores this process of the social contract, thus of the duty and debt that imply promise and memory. Now, promise and memory always entail harshness, cruelty, and violence (*Hartes, Grausames, Peinliches*). The debtor pledges himself, he gives a pledge to inspire trust in his promise, to consecrate the holiness of his promise (*die Heiligkeit seines Versprechens*); the debtor pledges to indemnify the creditor in case he does not pay, by giving the creditor something he possesses, for example his body, or his wife, or his freedom, or even his life (*oder auch sein Leben*), or even in certain religions, his eternal salvation, the salvation of his soul, up to and including his rest in the grave — as for ex-

11. During the session, Derrida adds: “This is the same logic as that of cruelty.”

ample in Egypt where the corpse of the debtor continued to be pursued or persecuted by the creditor. And Nietzsche adds an example that makes one think of Shylock of whom we spoke a lot here last year or two years ago.¹² He writes:

Above all, however, the creditor could inflict every kind of indignity and torture upon the body of the debtor; for example, cut from it as much as seemed commensurate with the size of the debt — and everywhere and from early times one had exact evaluations, *legal* evaluations, of the individual limbs and parts of the body from this point of view, some of them going into horrible and minute detail. I consider it as an advance, as evidence of a freer, more generous, *more Roman* conception of law when the Twelve Tables of Rome decreed it a matter of indifference how much or how little the creditor cut off in such cases: “*si plus minusve secuerunt, ne fraude esto.*” (64)¹³

But notice how Nietzsche interprets this progress, which is a progress in the evaluation of this famous “equivalence.” In place of an advantage that compensates (as *Rückzahlung*, as equal and accountable compensation in return) in the form of something or someone, a wife, for example, or a good, a thing, a body, the creditor is granted a psychic reimbursement, as it were, psychic or symbolic. Instead of a thing, instead of something or someone, he will be given some pleasure, some enjoyment [*jouissance*], a feeling of well-being or of a greater well-being (*Wohlgefühl*), he will be given a pleasure that consists in the voluptuous pleasure of causing the other to suffer, and cruelly, the voluptuous pleasure, says Nietzsche in French, of “faire le mal pour le plaisir de le faire,” that is, of doing harm for the pleasure of it [here is a definition of cruelty, the cruelty condemned by the declarations we have quoted, and that think they are doing justice to justice, doing right by the law, fully within the law, by authorizing one to punish, to be sure, thus to do harm, but not “for the pleasure of doing evil, of causing pain”]. I return to Nietzsche.¹⁴ In place of some equivalent, something or someone, one grants in return, as payment, the pleasure of doing violence (*Genuss in der Vergewaltigung*), “la jouissance de faire violence,” as the French translation has it; I would also say the pleasure taken, the enjoying [*le jouir*] that has to do with

12. First year of the EHESS seminar “Perjury and Pardon” (1997–99), the session of November 26, 1997.

13. During the session, Derrida provides a translation of the Latin quotation: “it is not wrong to take more or less.”

14. A notation in the typescript reads: “I return to N. pick up from above.”

exercising power (*Gewalt*), and here even with exercising one's sovereignty over the debtor — man or woman. This is the foundation of what Nietzsche in concluding section 5 calls a "right to cruelty (*Anrecht auf Grausamkeit*): "The compensation (*Ausgleich*), then, consists in a warrant for (*Anweis*) and right to cruelty" (65; *KSA*, 300).

Since the spiritualizing ruse of this principle of equivalence (spiritualizing because it transforms, transmutes the payment of an external thing or good into a psychic enjoyment, an internal enjoyment: instead of something or someone, I receive in compensation, as payment of the debt, as redemption of the debt, the right to enjoy, the right to the pleasure of making the other suffer, the right to cruelty), since the spiritualizing ruse of this principle of equivalence is the origin of the social contract, of the law, and of religion, you see how Nietzsche might interpret Christianity and even Christ's sentencing to death (you remember that, at the beginning of the seminar, Christ was one of our four theatrical paradigms of the theologico-political dimension of the death penalty). Nietzsche, in sum, does not read the crucifixion as a simple sentencing to death by men or by a theologico-political power, or rather, he interprets this sentence of theologico-political origin as an extraordinary ruse of cruelty in the logic of debt and payment or redemption of the debt. What he calls the stroke of genius of Christianity (*Geniestreich des Christentums*) is that God sacrifices himself, condemns himself to death; he sacrifices himself in the person of his son to redeem man, to pay the debt or the guilt of man and the sinner, who is a debtor. That is the ultimate meaning, the unbelievable meaning of the Incarnation and the Passion. I say "unbelievable" because, concerning this commercial transaction of redemption of the debt of the other, our debt, by God, in the course of an execution, and the liquidation of the credit by the crucifixion, Nietzsche himself says: "Can one credit that?" (92; *KSA*, 331). So the sentencing to death of Jesus by God, who first of all refused to pardon him, like some common governor (for who else but God the father finally sentenced him to death, by abandoning him to the Jews and the Romans? And the bloody crucifixion might be compared to the infanticide, this time paternal, comparable to the maternal infanticide we were talking about the last time while reading Kant, and that shields the criminal, man or woman, from the death penalty; and in both cases there is an illegitimate child, born out of wedlock: Jesus is not a legitimate son), so the sentencing to death of Jesus by God, this Passion and this Crucifixion that will become a point of reference for abolitionists, Hugo in the lead, would be one such cruel transaction in the payment of the debt for a wrong or an irremissible debt, that is, unpayable and unpardon-

able. All of this is a priceless [*impayable*]¹⁵ story, a story of the payment of an unpayable debt and the forgiving of the unforgivable, the irremissible; but the stroke of genius of Christianity is to have opened a hyperbolic passage at the limit of spiritualization and thereby to have reversed or feigned to reverse the order of things by having it be the creditor himself who offers himself in sacrifice (via his Son) for the debtor, for the payment of the debtor's debt. And this is called love, the love that means that the creditor pays the debt, pays the debt to himself and says to the other in sum: I love you, I pay you what you owe me, I give you what you owe me, I give you what you do not have or else I forgive you your unpayable wrongs, your debts, your unfulfilled promises, your unpardonable perjuries. Christianity's priceless [*impayable*] stroke of genius, this reversal of the debt, this love, Nietzsche believes it is unbelievable and he wonders, in parentheses "can one credit that?": (*sollte man's glauben?* must one believe that, should one believe in it? Should one put faith in these unbelievable things on the subject of credit?).

Here are the several lines I have just glossed (read also what precedes them in section 21 of the Second Essay) and you are going to see the idea of eternal punishment, of the inexpiable, of the unforgivable link up with our problematic of the death sentence — which Nietzsche does not speak of explicitly under that name but which he is speaking of all the time in sum. For, in short, to condemn to death is either to refuse to forgive, to deem the crime inexpiable, or else — we will come back to this — to leave to God, in another world, the freedom and the sovereign power to forgive there where we, finite men, cannot do it. (Read and comment on *GM*, 111)

... until at last the irredeemable debt gives rise to the conception of irredeemable penance, the idea that it cannot be discharged ("eternal punishment"). Finally, however, they are turned back against the creditor, too: whether we think of the *causa prima* of man, the beginning of the human race, its primal ancestor who is from now on burdened with a curse ("Adam," "original sin," "unfreedom of the will"), or of nature from whose womb mankind arose and into whom the principle of evil is projected from now on ("the diabolizing of nature"), or of existence in general, which is now considered *worthless as such* (nihilistic withdrawal from it, a desire for nothingness or a desire for its antithesis, for a different mode of being,

15. [Translator's note]: Derrida is here flexing the adjective *impayable* between its more literal use, "unpayable," like a debt, and the figurative sense of "priceless" or "hilarious," as one might say of a very improbable story.

Buddhism and the like)—suddenly we stand before the paradoxical and horrifying expedient that afforded temporary relief for tormented humanity, that stroke of genius on the part of Christianity: God himself sacrifices himself for the guilt of mankind, God himself makes payment to himself, God as the only being who can redeem man from what has become unredeemable for man himself—the creditor sacrifices himself for his debtor, out of *love* (can one credit that?), out of love for his debtor! —(91–92)

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Read as well the following section, section 22. There Nietzsche analyzes in very powerful terms this executioner that God is, this madness of the will that is psychical cruelty (*eine Art Willens-Wahnsinn in der seelischen Grausamkeit* [the will becomes mad, the will itself wills, it wills itself mad, it is mad to will itself mad, madness is not an accident or an affect; it is maddened by itself, mad about itself, intoxicated and mad with a madness of voluntary freedom, of pure will, thus of sovereignty, and even of good will; Kant is mad, and cruel, as you will hear in a moment]),¹⁶ all of this transforming the earth itself into an insane asylum (*Die Erde war zu lange schon ein Irrenhaus: the earth has been for too long already a madhouse!*).

To do evil for the pleasure of doing evil, to take pleasure in it, to take even an infinite pleasure, at the very place where one does not know, here then is the cruel mechanism, the very definition of bloody cruelty that is supposedly at work in all these phenomena of belief, social contract, culture, religion, and especially morality; here is the “genealogy of morals”: cruelty, the theater of cruelty, the history of cruelty, or rather the prehistory of history as cruelty. There is nothing surprising then if Kant, the greatest thinker of the purest morality in the history of humanity, but also the one who said, in *Religion within the Limits of Reason Alone*, that only Christianity was an intrinsically moral religion (see “Faith and Knowledge”),¹⁷ there is nothing surprising in the fact that Nietzsche finds Kant “cruel” and that he finds a certain wreak of cruelty, a certain odor of cruelty in the categorical imperative. I indeed say “odor” of cruelty because that is Nietzsche’s sensual register when he speaks about it: he sniffs; he smells the symptom with keen nostrils, the sensitive sense of smell of a genealogist animal; he smells blood, even if cruelty is

16. The closing parenthesis has been added.

17. J. Derrida, “Foi et savoir: Les deux sources de la ‘religion’ aux limites de la simple raison,” in Derrida, Gianni Vattimo, et al., *La religion* (Paris: Le Seuil, 1996), pp. 9–86; Derrida, “Faith and Knowledge: The Two Sources of ‘Religion’ at the Limits of Reason Alone,” trans. Samuel Weber, in Derrida, *Acts of Religion*, ed. Gil Anidjar (New York: Routledge, 2002), pp. 42–101.

not what Kant means to say, and even if the word *grausam* makes no reference, like *cruor*, *crudelis*, *crudelitas*, to blood, to flowing red blood (*cruor*); but Nietzsche, on the other hand, in the same context, makes several literal references to blood. Nietzsche smells the odor of cruelty (he smells it, he says that the categorical imperative, the soul of Kantian morality, smells or even stinks of cruelty: *der kategorische Imperativ riecht nach Grausamkeit*). Kant *stinks*¹⁸ (as one would say in English) of Christian cruelty.

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This Nietzschean diagnosis (namely that Kantian morality is sick with cruelty, that the categorical imperative is, stinks of cruelty) opens the way to any thinking of “Kant with Sade” to cite Lacan’s text, about which I will say a word in a moment. First of all, because at issue is a diagnosis of a cruelty that has no contrary because it is originary, and therefore the phenomenon of non-cruelty, the appearance of non-cruelty would be but a dissimulated cruelty, or even a bid to raise the level of cruelty. Originary cruelty, originary sadism, we could treat this patiently only by questioning in particular the Freud of *Three Essays*, of “Instincts and Their Vicissitudes,” or of *Beyond the Pleasure Principle*, “The Economic Problem of Masochism,” notably when he defines masochism as a sadism turned back against the self, either directly or through the mediation of another. Before taking on the passive voice, the verb “to make suffer” passes by way of the reflexive middle voice (“to make oneself suffer”¹⁹ whether by oneself or by the other). I will not get involved here in the debate, which is moreover internal to Freud’s thought itself, concerning whether or not this masochism is originary qua sadism turned back on itself, or on the subject of which comes first, sadism or masochism (“a sadist is always at the same time a masochist,” says Freud already in 1905 in the *Three Essays*).²⁰ But since the question of death and sentencing to death by the state is our subject, I will refer especially to *Beyond the Pleasure Principle*—where moreover Freud acknowledges that he has steered a course “into the harbor of Schopenhauer’s philosophy”²¹ and where Nietzsche is implicitly very present; where moreover the motif of the “demonic” is fundamental, as is what is said about the drive to dominate (domination, *Bemächtigung*, *Bewältigung*, the specificity of which I underscored with

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18. [Translator’s note]: “Stinks” is in English in the original.

19. The closing quotation mark has been added.

20. Sigmund Freud, *Three Essays on the Theory of Sexuality*, trans. James Strachey, (New York: Basic Books, 1962), p. 25.

21. Sigmund Freud, *Beyond the Pleasure Principle*, trans. James Strachey (New York: W. W. Norton, 1961), p. 44.

great insistence in “To Speculate—on ‘Freud’” in *The Post Card*, notably in its relation to love life and to the couple formed by sadomasochism).²² In the same chapter of *Beyond the Pleasure Principle*, Freud evokes the possibility that erotic sadism is merely a death drive detached from the ego by the narcissistic libido, which can be directed only at the object, with the result that amorous possession tends toward the cruel destruction of the object; and when originary sadism remains pure of any mixture, we would then have this too familiar and indiscernible mixture of love/hate. But it is in the same chapter of *Beyond the Pleasure Principle* that there appears, to be sure as a figure, as a political metaphor of the organic, the image of the sacrifice of cells by the cellular state that, in certain illnesses, sends cells to their death so that it, the state, can survive.

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This bid to raise the level of originary sadistic cruelty that has no contrary and that means that surpassing cruelty by an apparent non-cruelty would be merely a surpassing *in* cruelty, a surfeit of cruelty, finds its illustration, as concerns the death penalty, in the debate between, let us say, abolitionism (Beccaria) and non-abolitionism (Kant), given that, as we were saying, one can always interpret Beccaria’s proposal as still more cruel than the still more cruel proposal of Kant, more cruel, then, than the death penalty, since Beccaria claims that the risk of a life sentence of hard labor will make the criminal suffer more and thus fear more than the threat of immediate death. What is more, Voltaire, even as he supported Beccaria, had already evoked this logic when he wrote in the article “On Murder” in his text *The Price of Justice and of Humanity* (1777). (Read Voltaire, 18)

The damage must be repaired: death repairs nothing. One will say to you perhaps: “Mr. Beccaria is mistaken; his preference for painful and useful labor, which will last a lifetime, is founded on the opinion that such a long and ignominious punishment is more terrible than death, which is felt for only a moment. One will point out to you that, if he is right, then he is the cruel one and the judge who sentences to the gallows, to the wheel, to the flames, is the indulgent man.” You will no doubt respond that it is not a matter of arguing which is the gentler punishment, but which is the more useful one.²³

22. J. Derrida, *La carte postale: De Socrate à Freud et au-delà* (Paris: Flammarion, 1980), pp. 430 ff.; *The Post Card: From Socrates to Freud and Beyond*, trans. Alan Bass (Chicago: University of Chicago Press, 1987), pp. 402 ff.

23. Voltaire, “Du meurtre,” *Prix de la justice et de l’humanité* (Paris: Éditions de L’Arche, 1999), p. 18.

Thus, one no longer knows who is more cruel or more sadistic, Beccaria or Kant, the one who opposes the death penalty or the one who maintains its principle. Here, then, in any case is what Nietzsche would teach us about the Sadian cruelty of the categorical imperative. If you wish to follow, both along this path and that of *Beyond the Pleasure Principle*, the consequence that Lacan draws in his fine text “Kant with Sade” (1963, reprinted in *Écrits*), I would advise you to read or reread this text, and, especially as concerns the death penalty, since that is our subject, in the passages where, as you recall Blanchot had done some fifteen years earlier (but his name does not appear a single time in *Écrits*, of course) in “Literature and the Right to Death,” he thinks together Sade and Saint-Just, and the guillotine. (“Sade,” says Lacan, “the former aristocrat, takes up Saint-Just right where one should. . . . Consequently, the revolution also wants the law to be free, so free that it must be a widow, the Widow *par excellence*, the one that sends your head to the basket if it so much as balks regarding the matter at hand.”²⁴ On the next page, a more interesting and original suggestion of a “sadistic impotence” [665] that Sade would have “failed” to remark: “The fact that Sade failed to make [the remark] gives us pause for thought” [ibid.]. The suggestion is discreetly taken up again at the end of the text: “I have forbidden myself to say a word about what Sade is missing here” [667], the next sentence unfortunately letting one think that for Lacan what is missed in this way should be sought in the vicinity of the mother, yet again, and of *Penisneid*.)²⁵ More interesting, for us in any case, especially when we seek to elucidate the double Christian root of both the death penalty and its abolition, is what Lacan notes for example in homage to Klossowski’s *Sade mon prochain*. (Read Lacan, *Écrits*, 789, then possibly 781)

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My structural reference points make it easy to grasp that the Sadean fantasy is better situated among the stays of Christian ethics than elsewhere. . . .

In my view, Sade does not have neighborly enough relations with his own malice to encounter his neighbor in it, a characteristic he shares with many people and with Freud, in particular. For this is indeed the only reason why beings, who are sometimes experienced, back away from the Christian commandment.

We see what is, to my mind, the crucial test of this in Sade’s rejection of

24. J. Lacan, “Kant avec Sade,” in *Écrits* (Paris: Le Seuil, 1966), pp. 785–86; “Kant with Sade,” in Lacan, *Écrits*, trans. Bruce Fink (New York: W. W. Norton, 2006), p. 663.

25. The closing parenthesis has been added.

the death penalty, the history of which would suffice to prove, if not its logic, at least that it is one of the correlates of Charity. (666–67)²⁶

But let us listen to Kant himself illustrate it once more:

Suppose someone alleges that his lustful inclination is quite irresistible to him when he encounters the favored object and the opportunity. [Ask him] whether, if in front of the house where he finds this opportunity a gallows were erected on which he would be strung up immediately after gratifying his lust, he would not then conquer his inclination. One does not have to guess long what he would reply. But ask him whether, if his prince demanded, on the threat of the same prompt penalty of death, that he give false testimony against an honest man whom the prince would like to ruin under specious pretenses, he might consider it possible to overcome his love of life, however great it may be. He will perhaps not venture to assure us whether or not he would overcome that love, but he must concede without hesitation that doing so would be possible for him. He judges, therefore, that he can do something because he ought to do it, and he cognizes freedom within himself—the freedom with which otherwise, without the moral law, he would have remained unacquainted. (659)

These are the paths that Nietzsche opened when speaking of the—fundamentally Christian—cruelty of Kant, Nietzsche, the thinker that Lacan unwisely believed he could relegate to what he called, I no longer remember where, “cheap junk” [*la pacotille*]. Here then, finally, is what Nietzsche says of the categorical imperative: it is the passage at the beginning of section 6 of the Second Essay:

It was in *this* sphere then, the sphere of legal obligations, (*In diese Sphäre, im Obligationen-Rechte also*), that the moral conceptual world of “guilt,” “conscience,” “duty,” “sacredness of duty” had its origin (*ihre Entstehungsherd*): its beginnings were, like the beginning of everything great on earth, soaked in blood thoroughly (*mit Blut begossen worden*) and for a long time. And might one not add that, fundamentally, this world has never since lost a certain odor of blood and torture (*einen gewissen Geruch von Blut und Folter*)? (Not even in good old Kant: the categorical imperative smells of cruelty.) (65; *KSA*, 300)

26. Derrida adds during the session: “In other words, Sade is opposed to the death penalty out of Christianity. I would have liked to quote another passage in the same volume where he refers to Kant, not to Kant’s canonical text on the death penalty, to which we will return, but to a certain very interesting passage in the *Critique of Pure Reason*.”

And then, re-posing, relaunching his question about the equivalent, the compensation for the debt by suffering, Nietzsche underscores not only the spiritualization, the internalization I was talking about a moment ago, but the bid to raise the stakes, the hyperbolic augmentation, the infinite disproportion, a pleasure of the “highest degree” that accompanies this law of cruelty: for a finite debt, in some sense, the compensation in psychic cruelty does not merely correspond but exceeds the correspondence by responding to it with a pleasure of cruelty that becomes infinite, in any case extreme, of the “highest degree.” Hence the enigma of Christianity and of the infinite counter-pleasure in cruelty, the counter-pleasure that goes to the limit of itself—and one may suppose that it is a matter of cruelty right up to death, to the death that the living must endure by dying living in some sense, by dying in its lifetime [*en mourant de son vivant*], as I read somewhere:

To ask it again: to what extent can suffering be equal or comparable (*Ausgleichung*) compensation for debts or guilt (*Schulden*)? To the extent that to *make* suffer [Nietzsche underlines *make*, *machen*, *leiden-machen*, not to suffer but to *make* suffer] was in the highest degree pleasurable [an extreme pleasure (*im höchsten Grade*)], to the extent that the injured party exchanged for the loss he had sustained, including the displeasure caused by the loss, an extraordinary counter-pleasure (*einen ausserordentlichen Gegengenuss*): that of *making* suffer (*das Leiden-machen*)—a genuine *festival* (*ein eigentliches Fest*; *Fest* is underlined, as is *machen*). (Ibid.)

And the important thing here is at the same time the festival, the spectacle, the jubilation, but especially that it be motivated by a counter-pleasure, the concept of counter-pleasure having here a specificity that is irreducible to that of pleasure.

Let me quickly read the lines that follow and leave you then to read the whole for yourselves. I quote only up to the point where, for once, Nietzsche names “capital executions” (*Hinrichtungen*).

... *making* suffer—a genuine *festival*, something which, as aforesaid, was prized the more highly the more violently it contrasted with the rank and social standing of the creditor. This is offered only as a conjecture for the depths of such subterranean things are difficult to fathom, besides being painful; and whoever clumsily interposes the concept of “revenge” does not enhance his insight into the matter but further veils and darkens it (—for revenge merely leads us back to the same problem: “how can making suffer constitute a compensation?”).

It seems to me that the delicacy and even more the tartuffery of tame

domestic animals (which is to say modern men, which is to say us) resist a really vivid comprehension of the degree to which *cruelty* constituted the great festival pleasure of more primitive men and was indeed an ingredient of almost every one of their pleasures; and how naïvely, how innocently their thirst for cruelty manifested itself, how, as a matter of principle, they posited “disinterested malice” (or, in Spinoza’s words, *sympathia malevolens*) as a *normal* quality of man — and thus as something to which the conscience cordially *says Yes!* A more profound eye might perceive enough of this oldest and most fundamental festival pleasure of man even in our time; in *Beyond Good and Evil*, section 229 (and earlier in *The Dawn*, sections 18, 77, 113), I pointed cautiously to the ever-increasing spiritualization and “deification” of cruelty which permeates the entire history of higher culture (and in a significant sense actually constitutes it). In any event, it is not long since princely weddings and public festivals of the more magnificent kind were unthinkable without executions, torturing, or perhaps an auto-da-fé, and no noble household was without creatures upon whom one could heedlessly vent one’s malice and cruel jokes. (Consider, for instance, Don Quixote at the court of the Duchess. Today we read *Don Quixote* with a bitter taste in our mouths, almost with a feeling of torment, and would thus seem very strange and incomprehensible to its author and his contemporaries: they read it with the clearest conscience in the world as the most cheerful of books, they laughed themselves almost to death over it). To see others suffer does one good, to make others suffer even more; this is a hard saying but an ancient, mighty, human, all-too-human principle to which even the apes might subscribe; for it has been said that in devising bizarre cruelties they anticipate man and are, as it were, his “prelude.” Without cruelty there is no festival: thus the longest and most ancient part of human history teaches — and in punishment there is so much that is *festive!* — (65–67; *KSA*, 300–301)

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In section 7 Nietzsche will speak again of the pleasure (*Lust*) that cruelty procures, and further on, in section 13, he insists on the fact that punishment is “indefinable (*undefinierbar*).” Indefinable because it has and it is a history, and only what has no history is definable. He specifies in parentheses:

Today it is impossible to say for certain *why* people are really punished: all concepts in which an entire process is semiotically (*semiotisch*) concentrated elude definition; only that which has no history is definable (*definierbar ist nur das, was keine Geschichte hat*). (80; *KSA*, 317)

The remark is very significant on the part of a genealogist who is basically proposing a genealogy of the source of punishment and cruelty rather than a history, and who acknowledges that the historicity of punishment,

and of cruelty or counter-pleasure, eludes definition precisely by reason of their historicity.

See as well the whole Third Essay, in particular section 21 on “death-seeking mass deliria”: “*evviva la morte*” (142).

This question of history and nature (of animal nature ultimately, of the nature of the living, of this *zoophysis* or of this zoo- or bio-physiology) brings us back, after this long circular detour, to what Hugo says about the unwritten law, natural law as social law, and to our initial question about the relations between this supposed natural law (namely, the so-called inviolability of human life or the “right to life”) and the history of Christianity.

We will come back to it next time, as well as to this question of red blood, the guillotine, and cruelty in Hugo.

As for the motif of *interest*, one should not necessarily confine it, as Baudelaire does, as Nietzsche also does no doubt, although less narrowly, to the sphere of zoo-psychobiology, in the common sense of this term, to the conscious or unconscious motivations of an individual, whether he be an abolitionist or an anti-abolitionist. No doubt we must broaden this analytic of interest to the social or national or state body and ask ourselves what interest a state, a national state, or even a global state might have in maintaining or suspending capital punishment.

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