

# THE ALL-SEEING SOVEREIGN: BLINDNESS AND VISION IN DERRIDA'S DEATH PENALTY SEMINARS

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*This article explores an intriguing, yet underdeveloped line of inquiry in Derrida's late Death Penalty Seminars concerning the inherent visibility or spectacle of the death penalty. Showing how this inquiry surfaces in Derrida's engagement with Foucault, the article argues that Derrida's Seminars offer crucial resources for critically analyzing, and thus rethinking, sovereignty and the principle of capital punishment. In particular, it demonstrates how visibility forms a key component of the structural scaffolding around the death penalty put under pressure by deconstruction. It then develops this claim by drawing salient connections between the Seminars and Derrida's work on other visual forms.*

Derrida articulated his position on the death penalty in a small handful of texts published in the 1990s and early 2000s, but it is only now, with the arrival of both years of Derrida's 1999–2000/2000–2001 Seminars, that his engagement with the question of capital punishment is fully fleshed out.<sup>1</sup> While the first year of the Seminars sketches the historical and philosophical framework within which a

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<sup>1</sup> Derrida's treatment of the death penalty is glossed but not entirely developed in the previously published dialogue with Elisabeth Roudinesco and in his address to the States General of Psychoanalysis from 2000. See Jacques Derrida and Elisabeth Roudinesco, *De Quoi Demain...* (Paris: Arthème Fayard/Galilée, 2001), tr. by J. Fort as *For What Tomorrow..., A Dialogue* (Stanford: Stanford University Press, 2004). See also Jacques Derrida, *États d'âme de la psychanalyse* (Paris: Galilée, 2000), tr. by P. Kamuf as "Psychoanalysis Searches the States of Its Soul: The Impossible Beyond of a Sovereign Cruelty," in *Without Alibi*, (ed.) P. Kamuf (Stanford: Stanford University Press, 2002). My focus in this essay is on Jacques Derrida, *La peine de mort, Volume I* (Paris: Galilée, 2012) and Jacques Derrida, *La peine de mort, Volume II* (Paris: Galilée, 2015). Translations from the second volume are my own. The first year of the Seminars was published in English, tr. by P. Kamuf and E. Rottenberg as *The Death Penalty, Volume 1* (Chicago: University of Chicago Press, 2013). Hereafter referred to parenthetically in the text as DP1 and DP2, with the English page numbers in Volume 1 followed by the French.

deconstructive critique of the death penalty can appear, the second year pursues a set of additional questions aimed primarily at undermining the deep structure of what Derrida consistently cites as the most formidable of the classical philosophical arguments in favour of the death penalty: Kant's. More specifically, at issue in the second year is the principle of the talion or talionic law installed at the heart of the Kantian argument for the principle of the death penalty as an essential feature of human law. From the very first session of the 1999–2000 Seminars, then, Derrida approaches the question of capital punishment by considering it as a key instance of the sovereign power of the state over the life and death of citizen-subjects, and as a privileged point of entry into what Derrida, following Schmitt, will call the theologico-political dimension of sovereignty in general. Yet in describing this approach, Derrida advances a striking claim. According to Derrida, the death penalty, in its very concept or, if you like, at the level of its basic logic, entails a certain form of visibility or spectacle: "*by definition, in essence, by vocation, there will never have been any invisibility for a legal putting to death, for an application of the death penalty; there has never been, on principle, a secret or invisible execution for this verdict. The spectacle and the spectator are required.*" (DP1, 2/25, my emphasis)

This claim, left more or less suspended in the text, is clearly not made in passing. Derrida returns to it more than once in the first year of the Seminars, in the 2000 dialogue with Elisabeth Roudinesco published as *For What Tomorrow*, and at a strategic moment in the second year.<sup>2</sup> Yet he never entirely develops this line of argumentation. Moreover, if we take it seriously and give it the weight Derrida's formulation suggests it calls for (Derrida is discussing a feature essential to the very definition of the death penalty), this claim raises a number of questions. What would it mean for the death penalty to have an irreducible dimension of spectacle or visibility, on principle, and in its very definition? What would recognizing or taking account of this dimension offer us? How might this change our understanding of what the death penalty is, in its concept or definition as much as in practice? And what, if anything, would recognizing this feature make possible by way of a deconstructive critique of capital punishment in our current moment?

The question of the present moment, of the present "age" or "epoch" with respect to the place of capital punishment in civil society, has a marked resonance here, insofar as this question is

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<sup>2</sup> See DP1, 48–49/83–84 and DP2, 294; see also Derrida and Roudinesco, *For What Tomorrow... A Dialogue*, 12/28 and 159/256.

itself an explicit theme submitted to scrutiny in the Seminars. In the second year of the Seminars, this question is at the very centre of Derrida's treatment of the classical psychoanalytic discourse on the death penalty, primarily Reik's. More to the point, Derrida consistently situates his analysis within a present moment or epoch marked by the apparent retreat of the death penalty, its gradual disappearance not only in the West but around the globe. This general movement (which Derrida never suggests might not still be reversed) corresponds, he underscores in a number of places, to a parallel movement bearing precisely on the feature of visibility just noted. Thus he explicitly takes up the history of invention and refinement around various machines for putting to death within the context of what he will call the "becoming-invisible" of torture, punishment, and blood. (DP2, 326) As Derrida acknowledges, then, it *seems* undeniable today, on this end of modern history, that the exercise of the death penalty (if not its representation in works of literature, film, and television) is increasingly invisible.<sup>3</sup> One need only recall, in this context, the famous opening scene of part one of Foucault's *Discipline and Punish*, and its central thesis: that the exercise of punitive power in modernity becomes increasingly removed from public view and de-spectacularized.<sup>4</sup> It is far from immediately clear, in other words—even on Derrida's own terms—that still, today, the death penalty ought to be approached from the perspective of its visibility and spectacle, that it ought to still be understood as a piece of what Derrida will call a fundamentally "theatrical, spectacular, or even voyeuristic machinery." (DP1, 2/25)

Yet this is, without question, Derrida's stated thesis. There is an essentially spectacular dimension, in the etymological sense, to the death penalty, wherever it is practiced. And this dimension is inef-faceable, Derrida seems to suggest. It is not simply essential to the practice of the death penalty and its "successful" functioning (in the legal or juridical sense); it is not just essential to what the death penalty has been historically in the West; but rather, it is intrinsic to the very logic, the very concept, of the death penalty as such, everywhere it is in place. There is in every death penalty, in the very

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<sup>3</sup> Derrida does seem to envision what might seem to be the disappearance of the death penalty in modernity as, at best, simply the disappearance of spilling blood. (DP2, 326)

<sup>4</sup> Michel Foucault, *Surveiller et Punir: Naissance de la prison* (Paris: Gallimard, 1975), 14–15, tr. by A. Sheridan as *Discipline and Punish: The Birth of the Prison* (New York: Vintage, 1977), 7–8. Hereafter referred to parenthetically in the text as SP, with the English page number followed by the French.

principle of capital punishment, a spectacle or visual display without which there is no death penalty as such. And thus, if deconstruction wishes to challenge the death penalty, one would have to think, it would have to somehow disrupt, destabilize, or undo this form of visibility.

Again, the question that imposes itself most forcefully here concerns how we might begin to understand this claim. In the following discussion, I take up some of the questions raised in Derrida's Seminars around visibility and the death penalty. My claim will be that Derrida's thinking in this area offers powerful philosophical resources. More precisely, I will argue that although Derrida himself does not fully develop this line of inquiry, the late Seminars offer vital resources for critically analyzing—and from there, rethinking—sovereignty and the principle of the death penalty. A Derridean account will allow us to see how visual spectacle forms not one possible element of punitive practice, which may or may not be erased in our own epoch, but rather a key structure installed within the very concept of the death penalty. In brief, it will be shown to form an essential component of what Derrida argues is the fundamental "phantasm" of sovereign mastery over finitude and death at the core of the political theology of capital punishment. And yet precisely to this extent, visibility represents one of the most fragile components of a structural scaffolding that can be put under further pressure by deconstruction. Put another way, it represents a key site where the deconstruction of the death penalty is possible, insofar as this procedure operates not by assailing the conceptual foundations of the death penalty from the outside (whereby it would be said that the death penalty fails to adequately weigh the value of human life, say), but by locating and bringing forward conceptual components of its edifice that can be shown to be internally fraught. My wager is that in order to see how this deconstruction operates, however, it is necessary to understand the precise way in which Derrida articulates questions of visibility not just in this context but more generally. In what follows, I attempt to outline this line of thinking, adding additional moves to a set of claims that remain admittedly fragmented and partial in Derrida's Seminars. Key here will be Derrida's earlier, less widely read works on visuality, in particular, his work on the visual arts of drawing, Derrida's focus in *Memoirs of the Blind* (1990), and photography, the subject of a series of texts dating from the 1980s and 1990s. While the turn to the visual arts may seem somewhat out of place here in a discussion of sovereignty and capital punishment, these texts will be shown to advance a core logic critical

to the deconstruction of the death penalty and the form of visibility it mobilizes.

## 1. Visibility and Phantasm

As Penelope Deutscher has shown, Derrida at times misconstrues and seems to quite strenuously *avoid* Foucault in a number of places in his treatment of the death penalty.<sup>5</sup> Yet, on the issue of visibility, Derrida's explicit engagement with Foucault in the Seminars can serve as a key point of entry. We should begin by noting that Derrida's treatment of Foucault on this issue can be situated in relation to the broader project of the Death Penalty Seminars, and the particular historico-philosophical perspective Derrida employs. As we have already seen, Derrida's approach attempts not only to foreground, but also to rigorously think through, the particular historical position from which it views capital punishment. Hence, throughout the Seminars, Derrida repeatedly underscores that he approaches the question of the death penalty as it is posed at the end of the 20<sup>th</sup> century, on the eve of the 21<sup>st</sup>. Thus he emphasizes that he cannot but take note of the fact that, at the time he is speaking, the practice of capital punishment is by all appearances and measures massively on the decline in the West and around the globe, as if it were finally reaching its terminal stage. In the final session of the second year, for instance, Derrida is explicit that his analysis necessarily approaches "the question of the death penalty" from the position whereby "at this end of the 20<sup>th</sup> century and the opening of the 21<sup>st</sup> century, [the question] poses itself differently, given that there is a progressive abolition of the death penalty accelerating across the surface of the earth." (DP2, 348) The position of deconstruction in this inquiry is thus undeniably marked, he continues, by the fact that "There is a movement at work and therefore one might think that it is irreversible." (DP2, 348)

Yet Derrida sees in the present "epoch"—and we will have to use this word carefully, since we know from Derrida's previous (and subsequent) quarrels with Foucault that he is quite skeptical of this

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<sup>5</sup> Penelope Deutscher, "'This Death Which Is Not One': Reproductive Biopolitics and the Woman as Exception in *The Death Penalty, Volume 1*," in *Foucault/Derrida Fifty Years Later: The Futures of Genealogy, Deconstruction, and Politics*, (ed.) O. Custer, P. Deutscher, and S. Haddad (New York: Columbia UP, 2016), 171–72.

term<sup>6</sup>—not a break with the past, nor a more subtle transition from, say, sovereign to disciplinary power, in which certain vestiges of what came before overlap with new practices, but rather a deep and abiding continuity. Indeed, one of Derrida's central arguments in the Seminars is that the massive philosophical and juridical discourse devoted to upholding the death penalty has always been indebted to the same logic of progressive advancement informing abolitionism. On this view, both the discourse in favour of the death penalty and the discourse against it answer to an archeo-teleological, Enlightenment ideal of human progress. Just as the practice of capital punishment must be continually refined in view of making executions ever more humane<sup>7</sup>, in the philosophical tradition, from Kant to Hegel and beyond, the death penalty is consistently understood as a kind of emblem of human progress, a privileged sign of the process whereby the human distinguishes himself from the animal. It is precisely the mark of "man's" enlightenment, according to this view—what Derrida calls "the classic philosopheme of all the great right-wing philosophies that have favoured the death penalty" (DP1, 116/170)—that he puts his phenomenal, biological life on the line in the establishment of the law. He thereby places the principle of the law above the attachment to mere survival said to be characteristic of the animal.

Viewed from this perspective, it becomes clear, first, that the traditional humanist argument that the death penalty constitutes a form of regressive barbarity, an affront to human dignity and the sanctity of life (Hugo is the chief spokesman for this tradition in the Seminars), will never succeed in undoing the logic of the death penalty. Second, any attempt to break the fatal "alliance" between modern abolitionism and the philosophical tradition favourable to the principle of the death penalty—any attempt to break the death penalty's stranglehold on the very notion of progress that would seem to point towards its eclipse—must have recourse to an altogether different logic. (DP1, 259/351) The deconstructive move, then, is to refuse this axiom. Even as deconstruction aims clearly at putting an end to the

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<sup>6</sup> Beyond Derrida's well-known treatments of Foucault in "Cogito and the History of Madness" and "To Do Justice to Freud," this issue is equally at stake in Derrida's discussion of Foucault in the first volume of *The Beast and the Sovereign*. Jacques Derrida, *Séminaire: La bête et le souverain, Volume 1* (Paris: Galilée, 2008), 440–42, tr. by G. Bennington as *The Beast and the Sovereign, Vol. 1* (Chicago: University of Chicago Press, 2009), 331–33.

<sup>7</sup> Here Derrida is much closer to Foucault than he would perhaps like to admit. Though Derrida never cites Foucault on the progressive history of the death penalty, Foucault makes explicit reference to it in *Discipline and Punish*. (SP, 12–13/19–20)

death penalty, it must continually underscore that even if there were to be something like total and complete abolition, the death penalty would live on. "There will still be some death penalty" even after abolition, as Derrida puts it at times, if only because the sovereign power of the state over life and death will live on in other forms. (DP1, 282/380)<sup>8</sup> Even if the practice of capital punishment were to be purely and simply abolished once and for all, the state retains, for instance, the legal, sanctioned power to expose citizen-subjects to death, by sending them to war or by other means. Thus, it is critical to Derrida's argumentation that there is still, today, and there will continue to be, some death penalty wherever the sovereign power of the state is operative, even as the practice of capital punishment appears increasingly on the decline. For the reasons just indicated, this is not simply an assessment of what abolitionism should expect, but rather a strategic lever for breaking the deadly alliance, operating at a more fundamental level, between abolitionism and the philosophical discourse of the death penalty.

It is within this context that Derrida takes on Foucault's *Discipline and Punish* in the Death Penalty Seminars and the question of the apparent disappearance of capital punishment from public view. In the passage from the final session of *Death Penalty, Volume II* cited above, for example, Derrida speaks explicitly of a certain history of blood to be thought alongside the history of the death penalty in the West. This history undeniably entails the erasure of blood, Derrida emphasizes: "when one moves to the electric chair or to lethal injection...one loses the visibility of literal blood, the visible literality of blood." (DP2, 348) It would be tempting to associate this movement with the gradual "disappearance" of the death penalty full stop, he notes. (*Ibid.*) Yet, when he treats the issue of visibility most explicitly, he is insistent that the disappearance of blood and the most visible forms of torture in modernity not only does not correspond with a general disappearance of the death penalty, but rather remains fully consistent with an understanding of capital punishment as visible spectacle. Despite appearances, he argues, the history of invention that runs from the guillotine to lethal injection to the gas chamber does not eliminate the cruelty of the death penalty, insofar as cruelty

can range from the most perverse refinement, from the most bloody or burning torture to the most denied, the most concealed,

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<sup>8</sup> "Even when the death penalty will have been abolished, when it will have been purely and simply, absolutely and unconditionally, abolished on earth, it will survive; there will still be some death penalty." (DP1, 282/380)



the most invisible, the most sublimely mechanized torture, invisibility and denial being never, and in no case, anything other than a piece of theatrical, spectacular, or even voyeuristic machinery. (DP1, 2/24–25)

Even when machines for killing provide for a certain amount of invisibility with respect to torture and suffering, Derrida suggests here, the death penalty itself is theatrical or voyeuristic. Hence Derrida links, as we have seen, visibility to the very concept of the death penalty:

By definition, in essence, by vocation, there will never have been any invisibility for a legal putting to death, for an application of the death penalty; there has never been, on principle, a secret or invisible execution for this verdict. The spectacle and the spectator are required. The state, the polis, the whole of politics, the co-citizenry—itsself or mediated through representation—must attend and attest, it must testify publicly that death was dealt or inflicted, it must *see die* the condemned one. The state must and wants to *see die* the condemned one. (DP1, 2/25)

The claim here is that for legal killing to be carried out under the auspices of the state or of a sovereign power, a certain openness to visual witnessing is necessary, even when the site or scene of execution is hidden from public view. A certain form of transparent visibility attests to the legitimacy of the execution, to its publicly recognizable legality. A secret killing is an extra-legal exercise of force; the administration of a capital sentence is the work of the state, which crystallizes the “will” of the citizenry. This witnessing may have undergone change in modernity—executions are no longer public—but the principle of this necessity remains in place. A state eyewitness is required at the execution, representing, in this capacity, the citizenry as a whole by standing in for it. (DP1, 3/25) It remains in place because this visibility, transparency, or openness to vision is, we have seen Derrida emphasize, essential to the very logic of the death penalty.

In his reading of *Discipline and Punish*’s opening pages, Derrida therefore underscores, as Foucault himself does, “the organized visibility of punishment” at play in the scene of execution. (DP1, 43/75) What Derrida wishes to bring forward in this scene, he says, is “the *seeing-punish* [voir-punir], a *seeing-punish* essential to punishment, to the right to punish as right to see-punish(ed).” (DP1,



43/75) Yet, taking his distance from Foucault's thesis concerning the supposed erasure of the spectacle of the scaffold in modernity<sup>9</sup>, Derrida goes on to suggest that perhaps this dimension does not so much disappear in the 19<sup>th</sup> and 20<sup>th</sup> centuries, as much as it undergoes a certain transformation, in the direction of a "tele-technical, or even televisual complication of seeing, or even a virtualization of visual perception." (DP1, 43/75)<sup>10</sup> Leaving to one side this line of argumentation around teletechnology and virtualization (acknowledging the highly specific sense in which Derrida uses the term "teletechnology"), as interesting as it is, for our part, we would simply note here that while Foucault emphasizes the manner in which the spectacle of the death penalty is thereafter "forbidden" (SP, 15/23) and disappeared (SP, 10–11/16–17), Derrida emphasizes its irreducibility, insofar as it is "essential to punishment." But just as important, he underlines the status of the spectacle as an essential prerogative enjoyed by the sovereign or the state ("the right to punish as right to see-punished"). The central question thus becomes less "does this organized visibility of punishment ever go away or simply change form?" and more "what critical function must this visibility serve, perhaps even beyond legitimizing the execution of a death sentence, in order for it to be so essential, always and everywhere?"

The difference between Derrida and Foucault here can be measured in their respective answers to this question. Foucault consistently argues that the scene of the public execution ought to be understood principally as the place where sovereign power manifests itself and displays the overwhelming force of its privative power to those it takes as its subjects. It is this logic that then leads Foucault to emphasize its gradual disappearance with the emergence of disciplinary power. Derrida, however, emphasizes a different form of visibility. He underscores the process whereby, fundamentally and at the same time, sovereignty "sees itself" in the execution of the condemned, *displays itself to itself*. According to Derrida, it is at this precise moment that the state, wielding sovereign power over life

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<sup>9</sup> While Foucault emphasizes the disappearance of the public scaffold in the 19<sup>th</sup> century, he does not entirely overlook the place of capital punishment in the alternate visual regime of disciplinary power characterized by surveillance and panopticism. Foucault says explicitly at one point that modern punitive law is still haunted by the public execution (SP, 15/22), but he tends not to stress this point.

<sup>10</sup> In DP2, Derrida says much more explicitly that he will challenge Foucault's stated thesis concerning the "despectacularization" of punishment beginning in the 19<sup>th</sup> century. (DP2, 294)

and death, “best” *sees itself*; sees or visualizes, for itself, its absolutely indivisible power of sovereignty. “It is at this moment,” he writes, “in the instant at which the people, having become the state or the nation-state, *sees die* the condemned one that it best sees itself. It best sees itself, that is, it acknowledges and becomes aware of its absolute sovereignty.” (DP1, 2/25)<sup>11</sup> In this moment, the state is “witness of the execution and witness of itself, of its own sovereignty, of its own almightiness [*toute-puissance*]”; and “this act of witnessing must be visual: an eye witness [*oculaire*].” (DP1, 3/25)

Given this conclusion, though Derrida himself does not expand on this notion here or elsewhere, we might, for our part, extend the line of thinking traced here by connecting it to the discreet, but perceptible emphasis in the passages cited above on the essential, almost *desired* prerogative of the sovereign to see the condemned punished. Recall that, for Derrida, in the moment of execution the sovereign state not only “must” but also “wants” to see the condemned die (“The state must and wants to *see die* [*doit et veut voir mourir*] the condemned one”). (DP1, 2/25) It is as if there were something like a wish, or desire, on the part of the sovereign to see the condemned put to death, and to be capable of properly seeing itself in this process, operating here at the very heart of the death penalty.

Yet, if the death penalty is where sovereignty “best” sees itself, it follows that this structure of visibility forms one of key sites where the deconstruction of the death penalty is possible, even if Derrida himself does not follow this line of inquiry to its end. The key is seeing how this analysis of visibility intersects, in crucial ways, with Derrida’s more explicit critique of the death penalty as “phantasm.” This critique is carried out most clearly in the final sessions of the first year of the Seminars. There Derrida undertakes nothing less than the deconstruction of the concept and practice of the death penalty full stop. At bottom, he argues, the practice of the death penalty is underwritten by the dream of mastering death, of putting an end to finitude, via the sovereign power of a kind of God who masters finitude by deciding the precise moment of death. (DP1 258/349) The critical lever in deconstruction’s contestation of the death penalty, the one that allows it to show up the blind spot within what Derrida then names the phantasm of mastering death, will be an alternate conception of finitude. What allows deconstruction to undo the death penalty, Derrida argues, is, precisely, a rethinking of

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<sup>11</sup> On this passage, see also Elizabeth Rottenberg, “A New Primal Scene: Derrida and the Scene of Execution,” forthcoming in *The Oxford Literary Review*, vol. 38, no. 2 (2016): 8–9.

life in terms of mortal finitude, whereby mortality is inscribed in the very heart of "my life." (DP1, 256/347)<sup>12</sup> On this view, what is essential is that "it belongs to life not necessarily to be immortal but to have a future, thus some life before it, some event to come only where death, the instant of death, is not calculable, is not the object of a calculable decision." (DP1, 256/347)

This notion of life forms a kind of counter-concept to be mobilized by deconstruction. It is on the basis of this thought, in other words, that the death penalty appears deconstructible, as an attempt to master death. It is from this perspective that Derrida is able to say that the "calculating decision, by putting an end to life, seems, paradoxically, to put an end to finitude; it affirms its power over time; it masters the future; it protects against the irruption of the other. In any case, it *seems* to do that, I say; it only seems to do that, for this calculation, this mastery, this decidability, remain phantasms." (DP1, 258/349) Once life is thought in terms of the absolute irreducibility of mortality and the opening to the future, this calculating decision appears *as a phantasm*, a powerful fantasy producing a kind of truth effect. Yet it can be demonstrated, Derrida argues, that the death penalty, as calculable decision as to the precise time of death, is not operative in the instant that it thinks it is. The calculable moment of death in fact always remains, structurally, necessarily, fugitive. In the first year of the Seminars, Derrida pursues this very demonstration, first, via the philosophical argument whereby "what separates a state of death from a state of life" will be shown to be predicated on a wholly deconstructible precomprehension of "death." (DP1, 237–8/324; see DP2, 23) He then also does so by gesturing towards the various questions raised in the field of the life sciences as to where "the precise moment of death" is to be located: Is it the cessation of brain function? Respiratory function? And if it is the former, at what point exactly is a diminution of brain function irreversible? (DP1, 242/328) Stated succinctly, if it can be demonstrated that the notion of an absolutely determinable instant of death does not hold, then the death penalty will never succeed in its own most essential function. As David Wills has suggested, it can perhaps put to death, but it will never function *as penalty* if it cannot deliver, cannot give, the calculable moment of death it seeks to impose.<sup>13</sup>

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<sup>12</sup> On this issue, see Robert Trumbull, "Derrida and the Death Penalty: The Question of Cruelty," *Philosophy Today*, vol. 59, no. 2 (2015): 317–26.

<sup>13</sup> David Wills, "Machinery of Death or Machinic Life," *Derrida Today*, vol. 7, no.1 (2014): 14–15.

## 2. Blindness and the Instant

While in the Seminars Derrida pursues the deconstruction of the death penalty via this thinking of finitude and time (the calculable moment of death inflicted as penalty always escapes), it is possible to articulate this argument with the analysis of visibility traced above, and show that what has to this point been described as the sovereign's vision of putting the condemned to death can be understood as a kind of phantasm. Put another way, connecting these two apparently disparate lines of inquiry in the Seminars (visibility on the one hand, the phantasm of mastering death and finitude on the other), we can say that sovereignty never sees the calculable moment of death it requires in order to properly constitute itself. The reason for this is that Derrida's thinking in the Seminars, and his treatment of visibility more generally across a series of texts, allow us to posit something like an irreducible form of invisibility or essential blindness operative in the scene of execution. Even if Derrida himself does not develop this argument, it follows from everything he has said with respect to the visual. Reading the Death Penalty Seminars alongside these earlier texts, it becomes clear that the conceptual resources necessary to this argument are already in play in those texts.

In fact, the form of seeing at stake in the sovereign's desire to "see punished" traced above can best be understood, I would suggest, in terms of the consideration of visibility and blindness outlined in *Memoirs of the Blind*.<sup>14</sup> This less frequently cited text was written in 1990 to accompany an exhibition of drawings at the Louvre and subsequently published in expanded form. Central to Derrida's thinking here is what he will describe as a double blindness or invisibility located at the origin of drawing. (MB, 41/46) Derrida approaches this argument a number of ways in the essay, primarily via a set of narratives that relate the origin of graphic representation in the moment of inscription to the absence or invisibility of the model. The origin of graphic representation is then seen to reside in a form of perception that belongs not to immediate experience but to recollection, and thus to a certain invisibility or blindness (a recollection is not visible), unsettling the supposedly simple method of observation through which the draftsman views, and draws, the model. More

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<sup>14</sup> Jacques Derrida, *Mémoires d'aveugle: L'autoportrait et autres ruines* (Paris: Éditions de la Réunion des musées nationaux, 1990), tr. by P. Brault and M. Naas as *Memoirs of the Blind: The Self-Portrait and Other Ruins* (Chicago: University of Chicago Press, 2007). Hereafter referred to parenthetically in the text as MB.

importantly for purposes of the present discussion, this meditation on drawing leads Derrida to reflect on the origin of visibility in general, which he takes up through a brief, but nevertheless critical engagement with Merleau-Ponty. What Derrida finds in *The Visible and the Invisible*, he says, is a thinking of visibility whereby “The visible *as such* would be invisible...as the singular body of the visible itself, *right on* the visible—so that, by emanation, and as if it were secreting its own *medium*, the visible would produce blindness.” (MB, 51–2/56) To elucidate this notion, Derrida points not (as Merleau-Ponty does) to the multiple forms or “layers” of the invisible operating within vision, but to what he calls absolute invisibility. (MB, 52/56) He argues that the visible in general secretes, as it were, total invisibility. The primary reason for this is that

to be the other of the visible, *absolute* invisibility must neither take place elsewhere nor constitute another visible, that is, something that does not yet appear or has already disappeared.... This nonvisible does not describe a phenomenon that is present elsewhere, that is latent, imaginary, unconscious, hidden or past; it is a “phenomenon” whose inappearance is of another kind. (MB, 52/56–57)

To drive home what he has in mind here, Derrida mobilizes, for the purposes of his own argument, Merleau-Ponty’s notion that “The invisible is *there* without being an object, it is pure transcendence, without an ontic mask. And ‘the visibles’ themselves, in the last analysis...are only centered on a nucleus of absence.”<sup>15</sup> This “nucleus of absence” is one name, we could say, for what Derrida terms blindness.

More resources for rethinking not just visibility in general, but the moment of perception or witnessing crucial to the death penalty are found in Derrida’s works on visuality and the technique of photography. Looking back over these texts, one begins to see more clearly how the forms of visibility mobilized by the death penalty, including the sovereign’s “eye witness” (*témoign oculaire*), are displaced and put into question by deconstruction. The turn to photography may appear somewhat out of place in this context, yet this turn follows directly from the analysis of visibility we have just traced in *Memoirs of the Blind*. Indeed, in that text, Derrida points

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<sup>15</sup> Maurice Merleau-Ponty, *Le Visible et l’Invisible* (Paris: Gallimard, 1964), 282–83, tr. by A. Lingis as *The Visible and the Invisible* (Evanston: Northwestern UP, 1968), 257. This passage is cited in Derrida at MB, 52/57.

quite explicitly in this direction. There he writes, "Because the loss of direct intuition, as we have seen, is the very condition or hypothesis of the gaze, the technical prosthesis takes place, takes its place, before all instrumentalization, as close as possible to the eye, like a lens made of animal matter." (MB, 70/74) Thus, in the same way that Derrida famously thinks "writing" not as secondary technique or supplement in relation to phonetic language but as the nonfoundational trace structure at the heart of the living present, so too will "photography" come to figure something other than a merely secondary technique of imprinting light. Derrida thus discussed photography in relation to signal deconstructive themes such as tracing, inscription, and reproducibility in a handful of texts dating from the 1980s and 1990s: most notably, "The Deaths of Roland Barthes" (1981), *Right of Inspection* (1985), *Copy, Archive, Signature* (1992), *Echographies of Television* (1993), "Alethia" (1993), and *Athens, Still Remains* (1996).<sup>16</sup> In these texts, photography will come to be understood not in terms of a technics that supervenes on the primary experience of visual perception, but rather as the very model for understanding what visual perception or experience always already was, "prior to," or without, the machine. Here, experience and perception as they operate in the supposed immediacy of the living present are necessarily divided between protention and retention, and thus already, from the very outset, have the structure of a trace.

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<sup>16</sup> Jacques Derrida, "Les morts de Roland Barthes," in *Psyché: Invention de l'autre* (Paris: Galilée, 1987), 273–304, tr. by P. Brault and M. Naas as "The Deaths of Roland Barthes," in *Psyche: Invention of the Other, Vol. 1*, (ed.) P. Kamuf and E. Rottenberg (Stanford, CA: Stanford UP, 2007), 264–98; *Droit de regard* (Paris: Minuit, 1985), tr. by D. Wills as *Right of Inspection* (New York: The Monacelli Press, 1998); "Die Fotografie als Kopie, Archiv und Signatur: Im Gespräch mit Hubertus von Amelunxen und Michael Wetzel," in *Theorie der Fotografie IV, 1980–1995*, (ed.) Hubertus von Amelunxen (Munich: Schirmer/Mosel, 2000), tr. by J. Fort as *Copy, Archive, Signature*, (ed.) G. Richter (Stanford, CA: Stanford UP, 2010), hereafter referred to parenthetically in the text as CAS; "Alethia," in *Nous avons voué notre vie à des signes* (Bordeaux: William Blake & Co, 1996), tr. by K. Saghafi and P. DeArmitt as "Alethia," *The Oxford Literary Review*, vol. 32, no. 2 (2010): 169–188; Jacques Derrida, *Demeure, Athènes* (Paris: Galilée, 2009), tr. by P. Brault and M. Naas as *Athens, Still Remains* (New York: Fordham UP, 2010), hereafter referred to parenthetically in the text as ASR; Jacques Derrida and Bernard Stiegler, *Échographies de la télévision. Entretiens filmés* (Paris: Galilée/INA, 1996), tr. by J. Bajorek as *Echographies of Television* (London: Polity, 2002). I list these texts in order of the date of their original publication in journals or catalogs ("Deaths of Roland Barthes," "Alethia"), or the year in which the published interview was conducted and transcribed (CAS and *Echographies of Television*).

Perception thus comes into being, the very first time, always already “as photographed.”<sup>17</sup> In *Copy, Archive, Signature*, Derrida explicitly describes the trace as “a priori photographic.” (CAS, 17)<sup>18</sup> The reason for this is, as he had undertaken to show in his very early texts on Husserl, that “the living present is itself divided.... It divides itself, in its life, between its life and its afterlife, without which there would be no image, no recording. There would be no archive without this dehiscence, without this divisibility of the living present, which bears its specter within itself.”<sup>19</sup>

A certain thinking of time as originary delay or lag was at work in Derrida’s early analyses of the divisibility of the “living present” in Husserl, and this deconstruction of the now point of the instant resurfaces in Derrida’s theorization of photography, only now it is inscribed explicitly in a visual register. Key here among Derrida’s various comments on photography is his critique of the guiding myth or fable of photography and its supposedly privileged relation to the referent, captured at a given moment in time. According to this view, the photograph has a singular relation to the referent insofar as the photograph captures it as it really was, by means of the photochemical imprint and in the instantaneous blink of an eye. However, as Michael Naas has shown, Derrida sees in the photograph—in his discussions of the work of particular artists, but also in his treatment of the photograph in general—not the imprint of an instantaneous now point, but the overlapping of multiple times or temporalities made possible by a structure intrinsic to the technique of photography: the timing or delay mechanism.<sup>20</sup> This delay, Derrida argues, inheres necessarily in every photo, however minimally condensed or reduced it might be, thereby inserting a kind of hiatus or differential opening into the trace structure of any and every photograph.<sup>21</sup>

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<sup>17</sup> See also Derrida’s description of this structure in *Echographies*: “Mourning and haunting are unleashed at this moment. They are unleashed before death itself, out of the mere possibility of death, that is to say, of the trace, which comes into being as immediate sur-vival—and as ‘televised.’” (Derrida and Stiegler, *Echographies of Television*, 132/148)

<sup>18</sup> The interview has not, to my knowledge, been published in French. Thus I provide only the English page numbers.

<sup>19</sup> Derrida and Stiegler, *Echographies of Television*, 51/61.

<sup>20</sup> Michael Naas, “When It All Suddenly Clicked: Deconstruction After Psychoanalysis After Photography,” *Mosaic: a journal for the interdisciplinary study of literature*, vol. 44, no. 3 (2011): 93.

<sup>21</sup> In “Alethia,” Derrida describes how the interposition of the “optical apparatus” of photography in fact ought to remind us that “in *physis* already, the *interstice* will already have been open, like a shutter, so that photography might attest to it.” (Derrida, “Alethia,” 172)



Derrida's critique of the myth of photography comes through most forcefully in his treatment of Barthes. Initially in "The Deaths of Roland Barthes," Derrida picks up on a certain deferral of the referent at stake in Barthes' discussion of photography, time, and death that Barthes himself seems unable to think, insofar as he remains bound to a view of the photograph as the product of "the almost no time of a (camera's) click."<sup>22</sup> Referencing Barthes' well-known notion of the *punctum* of every photo, Derrida then gestures toward the need for what he calls a "contrapuntal theory" of photography, one that puts into question, via the notion of the trace, "the place of the point signed by singularity, the place of its very instant (*stigmê*)."<sup>23</sup> Hence, more than a decade later—not long after the publication of *Memoirs of the Blind*, which itself also gestures towards this contrapuntal theory (MB, 69/72–74)—we find Derrida once again remarking on, and critiquing, the manner in which "a chrono-logic of the instant, the logic of the punctual *stigmê*, governs Barthes' interpretation, which is in fact the common interpretation of the ineffaceable referent, of what has taken place only once." (CAS, 8) Here, Derrida is even more forceful in showing that Barthes' interpretation is undergirded by an uncritical notion of the time of the photo as an "undecomposable simplicity, beyond all analysis, of a time of the instant: the moment as the *Augenblick*, the eyeblink of a *prise de vue*, of a shot or of taking (in) a view." (CAS, 8) At stake here is the notion of the photograph formed in "the time without thickness of a null duration, in an exposure time reduced to the instantaneous point of a snapshot—an *instantané* as it is called in French." (CAS, 10)

But deconstruction shows that this cannot be the case, insofar as the supposedly undivided instant without thickness is in fact predicated on "a differing/deferring and differentiated duration." (CAS, 8) Once the supposedly secondary moment of "developing" the image is seen to be already underway from the very start, once we see that "the process of this processing has never had to wait to begin" (CAS, 11), two consequences follow. First, with reference to Barthes' conception of photography, "the question of reference becomes complicated, and therefore so does the question of art, of photography as a *technê*." (CAS, 9) But much more importantly for the purposes of the present discussion, if photography is not simply secondary with respect to perception, then we are now more justified than ever in saying that this same structure of differing/deferring holds for the

<sup>22</sup> Derrida, "The Deaths of Roland Barthes," 264/273.

<sup>23</sup> Translation slightly modified from Derrida, "The Deaths of Roland Barthes," 297/304.

apparently “pretechnical” witnessing of the instant. Thus, the instant one thinks one sees, one believes one sees in lending eye witnessing a certain credit or faith (and thus we would still, in speaking of the visibility of the death penalty, be speaking of the “theologico-political”), has this same structure, and is predicated on the *occlusion* of the complex duration of the trace.

If we had any lingering doubts about the structural link between Derrida’s reflections on photography and his reflections on the vision of a calculable moment of death we have seen at work in the scene of execution, these doubts are solidly put to rest by *Athens, Still Remains*. There, the trace structure of the instant and the photograph is put into direct conversation with the phantasm of mastering death, and even the death penalty. Derrida is quite clear there that the thought of photography is bound up, in deconstruction, with the attempt to think “a delay *before* time itself. To think the *at-present* of the now (present, past, or to come), to rethink instantaneity on the basis of the delay and not the other way around.” (ASR, 17/24) But since a delay is not a thing like any other, “neither a subject or an object,” it is a matter actually of thinking the necessity of “a *permanently delayed action* [*retardement à demeure*], the chrono-dissymmetrical process of the moratorium [*moratoire*], the delay that carves out its calculations in the incalculable.” (ASR, 17/24) In this specific text, however, this argument challenging what I have called the organizing myth of the photographic referent is equally shown—somewhat allusively, but nonetheless perceptibly—to bear directly on the phantasm of mastering death by making it calculable. Reflecting on a diverse set of Jean-François Bonhomme’s photographs of modern-day Athens taken over a number of years, Derrida links the themes of photography, testimony, and death. Every photograph attests, for Derrida, in its very becoming, to the fact that what it images “*will have* [devront] to die...[is] threatened with death or promised to death.” (ASR, 27/31) But then, in a move that cannot but appear striking to readers of Derrida’s Death Penalty Seminars, he uses this notion of “promising or owing to death” to connect his reflections on photography to the image of Socrates awaiting the hour of his death in *Phaedo* and *Crito* (Socrates is in fact discussed as one of the canonical figures subjected to the death penalty as a theologico-political judgment in the first year of the Death Penalty Seminars [DP1, 4–10/27–35]). The image here is, of course, that of Socrates awaiting the end of his reprieve as one judged and condemned to death, a reprieve that will last only as long as it takes for the votive procession of ships to return from Delos. “This time [of the reprieve] is not calculable,” Derrida writes, “and neither is the delay,

therefore, because the voyage took a long time and the winds were sometimes, unforeseeably, unfavorable. Such an uncontrollable delay mechanism (what is called *physis*), such incalculability, grants Socrates an indeterminable reprieve." (ASR, 31–33/34)

Yet, what Derrida finds in *Crito*, in particular, is something like the dream of photography "before the letter": for, crucially, it is there that Socrates attempts to make the incalculable moment or instant of his death calculable. "He claims, by a kind of knowledge, an unconscious knowledge, it is true, to see in advance, to foresee and no longer let himself be taken by surprise." (ASR, 33/35)<sup>24</sup> The dream of photography as the visual inscription of the instant and the dream of mastering death are shown here to coincide. The dream of Socrates is the dream that gives him "this rendez-vous, the moment of death"—that gives him the news "announcing not that he will die, but rather that he will die at a particular moment and not another"—and this vision "[annuls] in advance both the delay and the contretemps. (Is this not the very desire of philosophy, the destruction of the delay...?)." (ASR, 51/47–48) Moreover, as if via a prolepsis gesturing towards the Death Penalty Seminars, Derrida underlines, without really developing the insight, that this dream of Socrates is what allows him "to know when the *theoria* [the "procession" to Delos] would end thanks to a dream or, more precisely, by means of a knowledge [*savoir*] based on a *seeing* [*voir*], the seeing of a *vision* (*enupnion*) come to visit him in the middle of the night." (ASR, 33/35) The desire inhabiting photography would thus be the same desire inhabiting the desire to master death, to make time calculable and annul the intrinsic delay of the instant, and this desire manifests itself in a form of vision.

### 3. Rearticulating the Deconstruction of the Death Penalty

Drawing these threads together, that of blindness as it is theorized in *Memoirs of the Blind* on the one hand, and of time as originary delay as it theorized in Derrida's writings on photography on the other, we can now indicate the conception of visibility necessary to the deconstruction of the death penalty. To the exact extent that a deconstructive thinking of photography points to the arche-originary, differan-

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<sup>24</sup> Derrida is here referencing how, in the *Crito*, Socrates recounts having had a dream that tells him the time for him to die will arrive in three days. The passage Derrida himself cites can be found at 43c–44b of Plato's *Crito*.

tial delay at the heart not just of every photo, but of the now or the instant as such, it becomes possible to use it to rethink the moment of visual witnessing in general. Thus, it allows us to see how this irreducible delay is installed in the very moment in which sovereignty must, and wants, to view its power reflected back to itself by administering death at a given, calculable moment. Sovereignty therefore does not see what it thinks it sees in the scene of execution. The sovereign entity or state will never properly see given the calculable moment it wishes, or desires, to see in the scene of execution. Or rather, what it sees is not the moment of death but its phantasm, a kind of phantasmatic vision or wish fulfillment. And this because the hiatus of *différance*, which, in the present context at least, originates in the fundamental structure of the instant or the living present as such, dictates that the precise moment of death always escapes vision. It escapes sight just as it escapes calculation, and thus cannot become the object of an observation. The sovereign entity or state can perhaps put to death, make the condemned die, but it will never be able to fully, properly see the calculable moment of death it seeks to impose as a supervening force—insofar as this moment remains, for deep structural reasons, fugitive, undecidable.

This, then, would be the deepest source, to harken back to the discussion of *Memoirs of the Blind* above, of the secretion of blindness at the heart of the supposedly immediate and certain “eye witness” Derrida shows to be so crucial to the death penalty. Here we would do well to recall that, in Derrida’s formulation, the moment of witnessing at stake there is the one whereby the state functions not only as witness to the execution but, more importantly, as witness to itself. Hence, if it never fully sees the moment of death it desires and requires, it never fully sees itself in the paradigmatic moment in which its power is exercised. Its putatively indivisible power over life and death is never fully reflected back to itself. An essential blindness, which if it is not calculable is at the very least thinkable, necessarily inhabits the intrinsic visibility or spectacle of the death penalty.

Spectacular visibility, which initially appeared as one possible element of capital punishment which may come to be erased in our time or another time, now appears as key to the deconstruction of the death penalty full stop. If this visibility, as Derrida argues, is essential not just to the practice but to the very definition of the death penalty, then a destabilization of this feature will effect a concomitant destabilization of its broader conceptual structure. This deconstructive approach to thinking visibility, understood not just as one component of the death penalty’s axiomatic logic among others

but as an absolutely essential component, undermines, disturbs, or “shakes up” (to borrow a phrase from Matthias Fritsch deployed in a somewhat different context<sup>25</sup>) the theologico-political framework of the death penalty predicated on the wish, or desire, to exercise a sovereign mastery over death, to make the incalculable calculable. Such an analysis, the beginnings of which I am attempting to trace here, performs this function by making the failure or essential fragility of the death penalty, its ultimate “untenability,” *appear from the inside*, as Derrida puts it in *For What Tomorrow*, speaking of the death penalty and Kant’s philosophy of right.<sup>26</sup> Here, the deconstruction of the death penalty proceeds not by opposing to the death penalty an alternate notion of how “best” to protect life, but rather by demonstrating the internal blind spot installed at the level of its basic logic.

Yet if this line of questioning makes possible the deconstruction of the death penalty, we will not, for all that, on this basis pronounce the coming end of capital punishment. To do so would be to succumb to the very wish or desire inhabiting the phantasm of mastering death and finitude: the desire to make what escapes calculation calculable, and to see it, finally, with our own eyes, in the immediacy of the present. As we have seen, deconstruction refuses such a pronouncement, and for deep structural reasons, which remain, for us as much as for Derrida, irreducible. The work of deconstruction therefore remains still, always, necessary and urgent.

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<sup>25</sup> Matthias Fritsch, “Interment: Earth and Lifedeath in Derrida,” in his *Taking Turns with the Earth* (book manuscript shared by author). Fritsch’s phrase is a particularly useful way, I believe, of translating and understanding Derrida’s early description of the work of deconstruction as “solicitation.” See Jacques Derrida, *De la grammatologie* (Paris: Éditions de Minuit, 1967), 39, tr. by G. C. Spivak as *Of Grammatology* (Baltimore: Johns Hopkins UP, 1976), 25. I thank Samir Haddad for helping me to see this link, and for valuable comments on earlier versions of this essay.

<sup>26</sup> Derrida and Roudinesco, *For What Tomorrow*, 150/243.