



# Derrida on the

**E**leven years ago, the French deconstructionist philosopher Jacques Derrida participated in a conference at Cardozo on “Deconstruction and the Possibility of Justice.” He delivered an address on “The Force of Law,” which was later published in the *Cardozo Law Review*. Since then, Derrida and Cardozo have maintained a relationship that has brought him back to Cardozo on an annual basis, a relationship that he has described as “precious to me.” In October, Derrida returned to Cardozo once again, this time to lead a discussion on the death penalty. The event, which filled the largest of the Law School’s lecture halls to capacity, was sponsored by the Jacob Burns Institute for Advanced Legal Studies as part of the annual Law and Humanism series sponsored with the New School University.

Derrida described his ongoing seminar on the death penalty, of which this appearance was a continuation, as focusing on several threads, including the cruelty of execution, the nature of sovereignty in relation to capital punishment, the death penalty in the Western philosophical tradition, and the world political trend toward the abolition of capital punishment. Derrida graciously encouraged the audience to participate in the discussion, reiterating that he conceived of the event as a seminar rather than a lecture.

The issue of cruelty was one of the first that Derrida introduced, noting that the US Constitution bans cruel and unusual punishments. The word cruel comes from the Latin word meaning blood, and Derrida argued that the word carries connotations of making another suffer for suffering’s sake, or even taking pleasure in another’s suffering. The audience for the most part did not pursue this point, and this was a lost opportunity. The implica-

tions of Derrida’s observation run, fascinatingly, in two different directions. Punishment is customarily defined as hard treatment imposed because of a violation of legal rules. If so, then does this mean that execution as a punishment is never cruel, because it is not merely the imposition of suffering for its own sake? Or does it mean something entirely different? Capital punishment has been justified on the ground that it is cathartic for the victim’s family. But is an execution for this reason really anything more than the infliction of suffering for suffering’s sake? If so, then this reason cannot be a justification for punishment. Punishment is the infliction of pain for good reasons. It may be that execution, being cruel, can never be a genuine punishment.

The issue of capital punishment in the Western philosophical tradition received greater attention. Derrida began with the surprising but true observation that no philosopher in the Western tradition argues against the death penalty, while many of the most prominent, notably Immanuel Kant, advance arguments in favor of it. Prof. Scott Shapiro picked up this point, suggesting that the reason is the difficulty in distinguishing logically between death and other punishments. The strongest arguments against the death penalty are emotional ones: Executions are unpleasant; they create anxiety because we can never be certain of guilt; and executions are likely to be sought and supported by many people we do not respect. These are not the kind of arguments that philosophers make. Derrida concurred, and expanded the point to suggest that perhaps there is no pure philosophical argument against the death penalty. The question can be resolved only in political discourse, not philosophical discourse. In that case, the abolition of the death penalty in any given society is always a contingent

# Death Penalty

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thing. It might be brought back at any time, depending on the state of political consensus.

Derrida also suggested the complexity of this political problem at several points. Prof. Peter Goodrich, who moderated the conversation, observed that war is a manifestation of the death penalty, and that it may be impossible to abolish the death penalty without first abolishing war. Derrida agreed. He noted that there is a hypocrisy in the abolition of capital punishment in that it occurs within and is undertaken by a nation-state, while the nation-state preserves itself by killing external enemies. By doing so, it legitimates the idea of killing enemies of the public—which would seem to include the criminal. In his opening remarks, Derrida observed that it is impossible to separate political sovereignty from the power over life and death. For this reason, the Universal Declaration of Human Rights states exceptions to its ban on capital punishment. In order to maintain an essential aspect of its sovereignty, the state must reserve the right to impose the penalty of death, at least in exceptional cases.

Perhaps for these reasons, Derrida noted, the progress that has been achieved in the abolition of capital punishment around the world has come about as

a result of relations between sovereigns. The European Community demands the abolition of capital punishment as a condition of membership, a condition that played a role in France's abolition of the penalty and one that might lead Turkey, which seeks membership in the Community, to do so as well.

Derrida described his own participation in the debate in these terms. Given that no knock-down philosophical argument exists, the most one can do is to make small contributions to building political consensus. Derrida plans to continue to do this, in books, essays, and seminars such as this one. It is likely, on the evidence of this event, that his contribution eventually will not be a small one at all. ■

