

The Schiavo Case

John Protevi

Department of French Studies

Louisiana State University

www.protevi.com/john

A strange blend

- The juridically mundane
- The legislatively bizarre
- The mediatically spectacular

Media / judiciary interface



The political context

- The public / private split of liberal society
- Government ability to control “bare life”
- The “right to die” and assisted suicide
- The “right to life” / anti-abortion movement
- The biodefense turn of the “war on terror”
 - Interface of public health / national defense
 - Life is now the stakes / means of politics

The theoretical context

- Agamben: biopolitics
- Foucault: biopower
- Deleuze:
 - “Bio-ontology”: organic stratification
 - Jurisprudence: personhood and singularity

Plan of the talk

- Deleuze's ontology
- Deleuzian jurisprudence
- Biopower and biopolitics
- Personality, personhood, organic system
- Life, destratification, sacrifice
- Intensity, singularity, privacy

Deleuzean naturalism

- Naturalism: using the same concepts in the natural and social realms
 - Geomorphology
 - Meteorology
 - Biology
 - Historical political economy
 - Psychology

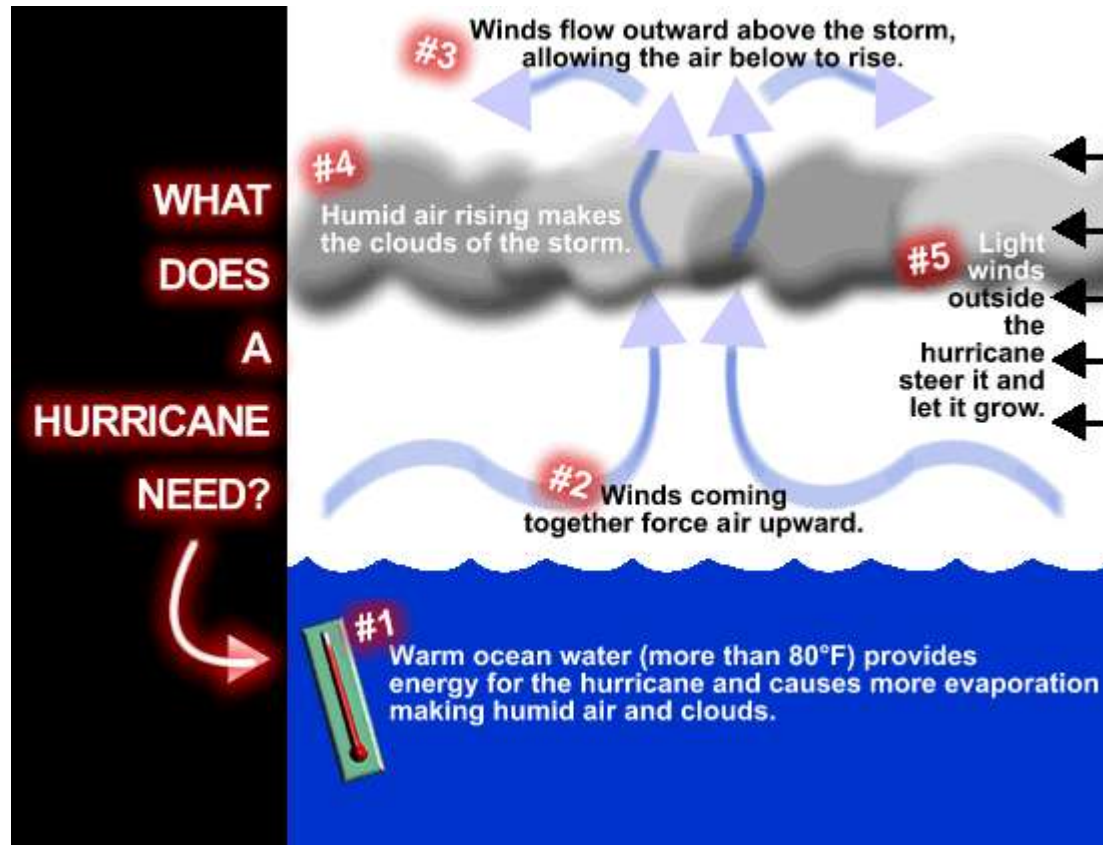
Deleuze and “complexity theory”

- DeLanda / Massumi both connect Deleuze and dynamical systems theory
- A series of behaviors and the patterns & thresholds of behaviors are not the same
- Deleuze calls this “ontological difference” the actual / virtual distinction
- DeLanda / Massumi map this onto the difference btw trajectories and attractors / bifurcators

Deleuze's ontology

- Intensive processes produce actual products following virtual structures
- The virtual register is differential and arranged in “multiplicities” or “Ideas”
- Intensive processes integrate / resolve / actualize virtual multiplicities
- E.g. a hurricane actualizes the differences among wind / air currents
- Slogan: Identities produced by differences

Virtual “multiplicity,” “Idea,” or “abstract machine”



Hurricane as intensive
process actualizing the
virtual “Idea”



Deleuzean jurisprudence

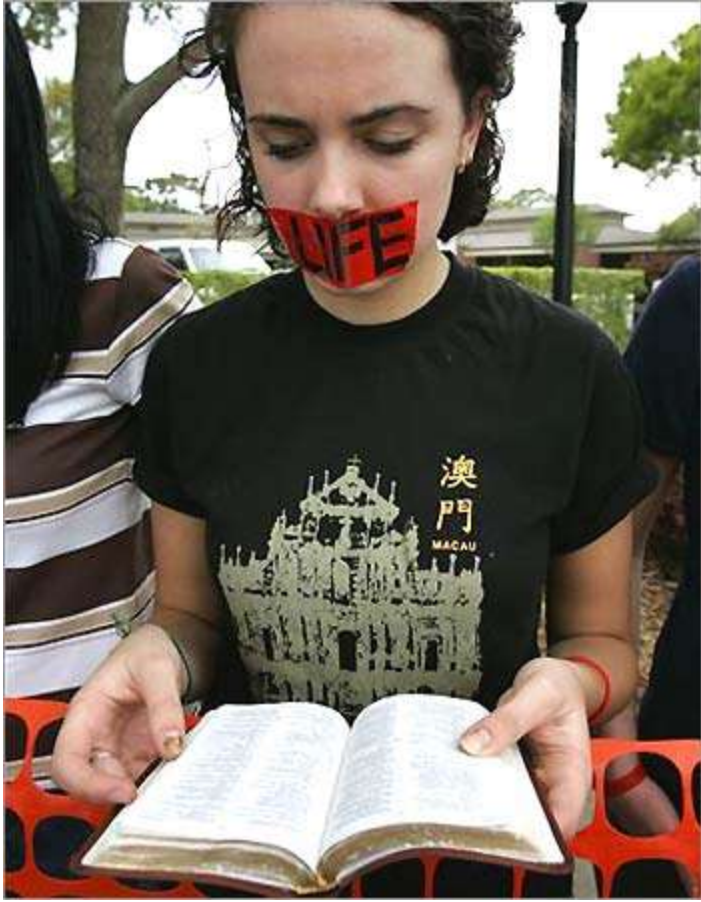
- “Jurisprudence ... proceeds by ... prolonging of singularities” (*Negotiations*).
- Each precedent is a singularity that covers a series of ordinary decision (*stare decisis*)

The right to privacy

- *Cruzan*: right to refuse medical treatment
- Common law right to informed consent
- Right to privacy in substantive due process tradition (*Griswold*; *Roe v Wade*; *Casey*; *Washington v Glucksberg*)
 - Not just fair procedures
 - But a person's life, freedom and property cannot be taken without appropriate governmental justification, *regardless* of the procedures used to do the taking.

- At stake is judicial review: can the courts rein in the executive?
- IOW, can the executive force a tube into you?

- What can the state require for the exercise by proxy of the right to privacy?
- *Cruzan*: state can require “clear and compelling evidence” of a person’s wishes
- *Cruzan*: state need not judge “quality of life” and can “simply assert an unqualified interest in the preservation of human life”



Biopower and biopolitics

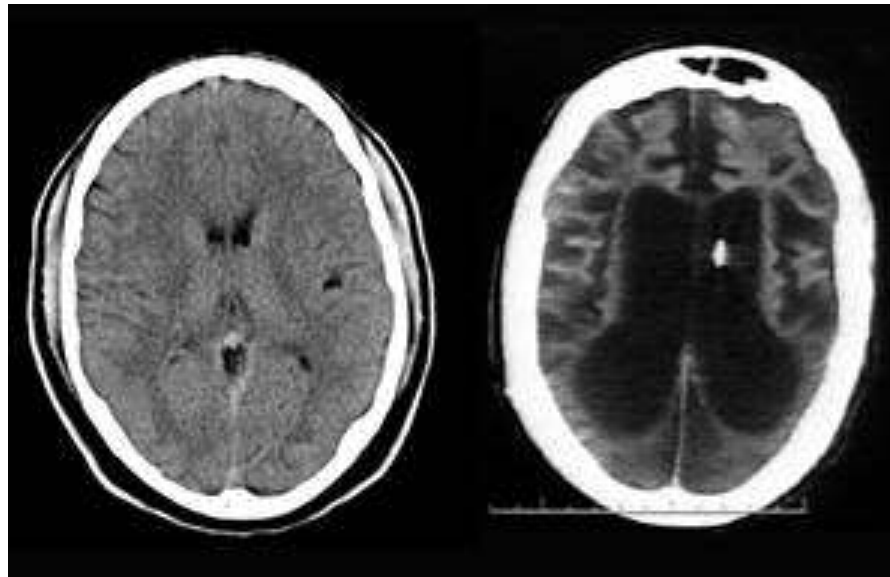
- Foucault: biopower: *modern* and *productive*
- Agamben: biopolitics: *ancient* and *predicative*
 - De-politicizing predication: exposure of bare life
 - “enemy combatant”: no judicial review



Agamben cannot handle Schiavo case

- Schiavo suffered real material damage
 - Not just a juridical judgment
 - Need Deleuzean concept of stratification
- Schiavo's bare life
 - Politicized and protected
 - Not de-politicized and exposed

2002 CAT Scan (Schiavo on right)



Foucault can help

- Medical intervention and the “administrative supplement” in palliative care
- Sexuality and racism elements of American “right to life” cases
- Hints as to non-sovereignty right to privacy

Personality, personhood, organic system

- PVS and “faciality”



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Faciality effect in PVS



A new science of prosocial human nature

- Contra EP / genetic reductionist views, which hold to methodological individualism
- DST: multiple levels of selection, including social patterns of development of affect
- Evolution:
 - Social brain hypothesis (modifying Robin Dunbar to include DST / affect angles)
 - Group selection
- Development:
 - Neonate face-recognition / imitation
 - Social triggers of brain development

Mirror neurons and empathy: a neuroscience of prosocial human nature?



Theory theory: 3rd person observation / inference

Simulation theory: 1st person modeling / inference

- Gallese et al (2004): “A unifying view of the basis of social cognition,” *Trends in Cognitive Science*.
- Singer et al (2004): “Empathy for pain involves the affective but not sensory components of pain,” *Science*.

Phenomenology: 2nd person intersubjectivity

- Thompson (2001): “Empathy and Consciousness,” *Journal of Consciousness Studies*.
- Gallagher (2005): *How the Body Shapes the Mind* (Oxford)

A fundamental link of affect, body image / schema / integrity

- Gallese and Singer: focus on “viscero-motor” centers in their simulation theories
- Damasio and Panksepp: primary awareness is engaged with proprioception of bodily condition
- Soldiers’ anecdotes: overwhelming negative feelings of seeing the other’s guts
- Agony of the other is powerfully felt:
 - “as if” simulation (Damasio)
 - corporeal intersubjectivity (Gallagher)
- Experienced as guilt (“My God, what have I done?”)

- Personhood
 - Personality = singular subjective interaction
 - Personhood = generic social responses
- Organic system
 - No personality; only generic physiology response
 - No personhood; only singular reactions (random blinks and smiles)

Materialist theory of personhood

- We shouldn't indulge an abjection of the material: the organic system in PVS surviving the death of the person should have a legal and moral status
- Just not that of "person"
- Personhood is an emergent property of a body displaying generic social, rational, hedonic behavior

The “undead”

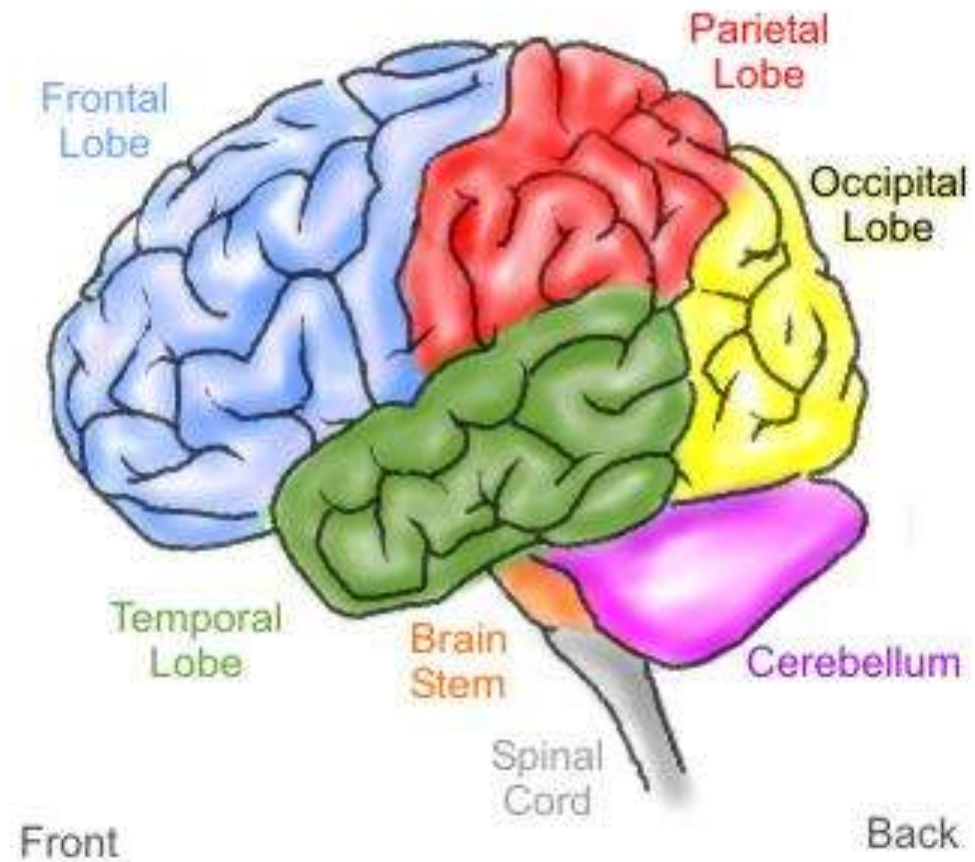
- We need to rethink our categories
- What is a “non-personal organic system that used to display behaviors that granted it personhood in the past”?
- What are the “surviving interests” of the former person?

Life, destratification, sacrifice

- The conatus of organic life is not sufficient for personhood
- The surviving interests of a person (to have its right to privacy qua refusing medical treatment honored) can come in conflict with the conatus of organic life

- Differential sensitivity to oxygen deprivation of brain organs
- Brainstem vs cortex (the “cortical theory of personhood”)

Regions of the Human Brain



- Deleuzean personality:
 - Production of novel, singular pattern of social interaction
 - Positive affect: empowering others (pop-psych) as puissance (vs pouvoir)

- Personality can free itself from organic-self valuing: sacrifice
- Agamben: bare life = “killed but not sacrificed”
- Avoiding horror of “locked-in syndrome”?
- Or wanting to spare loved ones from “faciality effect” and false hope?
- Err on “side of life” or to preserve sacrifice?

Intensity, singularity, privacy

- Sovereignty-based right to privacy
 - *My* body: possessive individualism / body politic
 - Implicated in biopower per Foucault's analyses
- Singularity-based privacy
 - Exposure to intensities that de-personalize
 - Personhood btw personality and organic system
 - The *haecceity* deserves a proper name: opening to intensive processes at turning points

- What do you want your loved ones to do if you were in a PVS?
- Not Heideggerian: effect of death on you
- Nor Levinasian: effect of other's death on you
- But: how should your undead status affect your loved ones?
 - This depersonalizes you via the depersonalization they will feel in this intense situation
 - Deleuze's name for "depersonalization"?

Love

- “Every love is an exercise in depersonalization on a body without organs yet to be formed, and it is at the highest point of the depersonalization that someone can be named ... acquires the most intense discernability in the instantaneous apprehension of the multiplicities belonging to him or her, and to which he or she belongs” (*ATP 49F / 35E*).