

THE TERRI SCHIAVO CASE
EMPATHY, LOVE, SACRIFICE, SINGULARITY

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PLAN OF THE TALK

Context in *Political Affect*

Bodies Politic: Bio-Psycho-Social Individuation

Biopower and Biopolitics (Foucault and Agamben)

Personality, Personhood, Organic System

Life, Destratification, Sacrifice

Intensity, Singularity, Privacy

In the first part of this talk I show how some ideas in the new "4EA" branch of cognitive science (embodied, embedded, extended, enactive, affective), which gets away from the computer metaphor to talk about affective cognition as the direction of action of an organism, can be illuminated by Deleuze's ontology. Now that may sound ridiculous, as Deleuze's terminology is notoriously baroque – how could it ever "illuminate" anything? So I'm going to be using plain English translations of his concepts; I think his concepts are too good, too useful, for his terminology to be such a barrier to entry. Then I'm going to use this mixture of Deleuze and 4EA ideas to examine a case study which has, besides its metaphysical and psychological implications, some ethical, political, and legal ones as well. So to deal with them we'll deal just a bit with Agamben and Foucault.

CONTEXT IN *POLITICAL AFFECT*

I'm going to assume you've all familiar with the outlines of the Terri Schiavo case: a juridically routine, media-politically inflamed, and philosophically fascinating "right-to-

die" case concerning PVS (persistent vegetative state). It's one of three case studies – the other two being the Columbine High School massacre and the Hurricane Katrina disaster – in a book of mine forthcoming with Minnesota. Each study examines the way in which politics, psychology and physiology intersect in "bodies politic," which is my take on "human nature." Now as I said, I work with a Deleuzean ontology: we aren't substances with properties, but singular patterns of social and somatic interaction. The embodied and the embedded aspects of our being intersect – we are bodies whose capacities form in social interaction. That is, our biology, our nature, is to be so open to our nurture that it becomes second nature – that's what "neuroplasticity" means. And it's in this intersection of the social and the somatic that subjectivity and selfhood emerge – and are sometimes attenuated and even bypassed. They are attenuated in the launching of "automatic" habits (such as empathic identification) and they are bypassed in the launching of extreme cases of basic emotions (such as rage and panic). In the first case, "you can't help yourself," you find yourself caught up in a particular feeling, and in the second, there's not even a "you" there anymore: "you" wake up later and wonder what happened.

In much simpler terms, "singular patterns of social and somatic interaction" means that we are what we can do with others – the way our embodied capacities, which develop in the history of the social interactions we have had up to the present, intersect with the similarly constituted embodied capacities of the others we now encounter. The complexity and creative potential of these encounters is such that we don't know what we are until we experiment with what we can do. This emphasis on open-ended, creative and unpredictable experimentation is part of the meaning of the at first glance very strange

Deleuzean term, "transcendental empiricism." But it also has echoes in the classic Greek injunction: "count no man happy until his death."

Why bring all this conceptual machinery to bear on the real-life Schiavo case? Well, I think case studies are an important and under-used tool in philosophical psychology, as opposed to thought experiments such as brain transplants, brains-in-a-vat, zombies, and others. Case studies do not aim at identifying the necessary and sufficient conditions for an essential distinction, as do thought experiments. Instead case studies reveal the outlines of concrete problems, which are the points of intersection of "multiplicities," a Deleuzean term of art which means a "problematic" field in which linked rates of change create conflicting pressures so that (1) any one move changes the conditions for future moves and (2) no one solution exhausts the potentials for future creatively different solutions. Deleuzean problems, the problems of life, cannot be "solved" once and for all; they can only be dealt with. With case studies we come to realize that facing the concrete situation individuates while de-personalizing; we lose our habits to gain our singularity, our uniqueness. I am, however, going to propose a singularizing thought experiment at the conclusion of the paper. And I'm going to argue that we should re-conceive the ground for the right to privacy from sovereignty – control of a substantial body – to embodied and embedded singularity – our ability to feel, to generate intuitions that are embodied appraisals of socially embedded situations.

BODIES POLITIC: BIO-PSYCHO-SOCIAL INDIVIDUATION

Let me slow down and provide some background for the analyses to come. This will take about 15 minutes, but it will all pay off in the end – I hope! The basic Deleuzean issue is

"individuation," which needs to be thought of as a process of transient emergence via the integration of a dynamic differential field. That's already a mouthful. What it means is that you don't determine individuality by looking at already formed substances; you look at the process by which an individual emerges by "crystallizing" out of a "metastable" field, to use a simple image. A crystal is formed by bringing together, by integrating, the potentials of the ever-changing or "meta-stable" field. But these potentials are not there in already individuated form; they are the potentials of difference gradients. There is literally nothing, no-thing, there prior to the crystal, that is, nothing crystalline.

Deleuze has a three-fold formula to express his ontology: beneath an *actual* substance we find *intensive* "impersonal individuations" and beneath them we find *virtual* "pre-individual singularities."

Virtual fields are composed of differential elements, differential relations and singularities: networks of linked rates of change with thresholds or turning points. The virtual doesn't exist, but provides the "diagram" for individuation processes, which are the only things that do exist. Virtual diagrams stay in reserve; no one solution exhausts their potential for future creative solutions.

Intensive individuation processes are flows of matter and energy, driven by differences or gradients, which produce individuals as transient emergences. In other words, individuation is the process by which a system self-organizes and exerts a "focus" as it constrains its components. Think of how a hurricane pops into being and how its focus strengthens and weakens until it dissipates. Now individuation as transient emergence is the integration of the virtual differential field: a hurricane appears at critical points in the relation of wind and wave action. Embryos are a favorite Deleuzean image

of intensive individuation; here we see an integration of the differential relations of gene expression networks and epigenetic factors such as relative cell position. Human development, from the earliest cellular differentiation through the latest twists to personality, is a series of such transient emergence processes.

Actual substances are systems at equilibrium or locked into habitual patterns. They are the cooled off or mature product of intensive individuation processes: think of rocks congealing from lava flows, or mature differentiated cell types having developed out of earlier totipotent stem cells, or indeed, the mature habits of a person set in his or her ways as the loss of earlier flexibility. And these habits are not just behavioral; they are perceptual as well: you can lose the ability to do anything more than "recognize" in a situation the things that fit into your pre-conceived categories; you can lose the capacity to feel what might be newly possible. Think of a mechanical quarterback who looks over the defense and sees only what he's been "programmed" to see, not what he might be able to do if he mixes thing up a little. We will come back to these points: in social terms, a "person" is actual insofar as personhood is the recognition of mature and habitual patterns of social interaction; a person is a generic member of society, able to answer to their name like everyone else. De-personalization, then, is the move from actuality back to intensity; it's the recovery via de-habitation of the capacity for flexible transformation and for sensitive, fresh intuition. De-personalization happens in a crisis, when you "don't know who you are anymore."

This is all very abstract. For an example closer to the topic of this talk, let's look at theories of the self as emergent from brain-body-environment loops.¹ There are many complex issues here. But perhaps I can at least sketch the three selves posited by

Damasio's 1999 work, *The Feeling of What Happens*. First, there is a "proto-self," defined as "the state of activity" within "an ensemble of [brain] devices which ... continually represent, nonconsciously, the state of the living body, along its many dimensions" (Damasio 1999: 22; italics in original). The "representation" of a bodily "state" by the proto-self "emerges dynamically and continuously" from multiple brain sites (154), and, as the body is constantly changing, here can be seen as integration of the differentiations – the instantaneous rates of change – along those "dimensions." Second, there is the "core self," which we can identify with Deleuze and Guattari's "nomadic subject," which Damasio defines as "a transient entity, ceaselessly re-created for each and every object with which the brain interacts" (17). And third, there is the production of the "autobiographical self," which "depends on systematized memories of situations in which core consciousness [correlated with the core self] was involved in the knowing of the most invariant characteristics of an organism's life—who you were born to, where, when, your likes and dislikes ... your name, and so on" (17). In certain social conditions, so goes the argument of *Anti-Oedipus*, this personalized, socialized, and familial fixed subjectivity assumes the form of "Oedipus."

We can also give a Deleuzian reading of Alva Noë's notion of the virtual content of perception, such that concrete perception is the resolution of a differential field or multiplicity. The differential relations here are those between movement and perceptual presence or appearance; the singularities in those relations are thresholds where qualitative perceptual change occurs (e.g., move too close to a pointillist painting and all you see are color dots, no longer forms). Borrowing J J Gibson's term, Noë claims that objects in the world are perceived as "affordances": "to perceive is (among other things)

to learn how the environment structures one's possibilities for movement and so it is, thereby, to experience possibilities of movement and action afforded by the environment" (*Action in Perception*, 105). Remember our mechanical quarterback: even he doesn't just see the positions of the players: he sees where they might go: it's just that he only sees the clichés of where they are "supposed to go."

We can adopt this model to talk about our perception of "social affordances." When we make sense of a situation, we determine the potentials in this encounter for developing social interactions. The differential relations here are between potentials for social interactions which vary as the members of the encounter make a "move" in the social game, moves in which someone offers, commands, cajoles, persuades, pleads, and so on. These possible moves are themselves taken up in relations of change: what Deleuze and Guattari call "de-territorialization" (changing the allowable patterns of the game) and "re-territorialization" (settling back into an old game, or setting forth the potentials of the new game).

We are zeroing in on the key point: Affect – the A in 4EA – is both openness and feeling, being affected. Affect is the feeling for variation; it is the intensive as opening up access to the virtual, to the differential field or multiplicity of the situation. The intuitions generated here are the integration of the differential situation. Neurologically, perception of social affordances happens via Damasio's somatic markers, which are brain states that record the state of the body in an encounter with an object. Now we would have to translate Damasio's static language of "states" into our dynamic language of differentiation / integration. To be fair, Damasio comes quite close when he says the core self is "a feeling that arises in the re-representation of the nonconscious proto-self *in the*

process of being modified within an account which establishes the cause of the modification" (1999: 172; italics in original). With this dynamic notion, we could talk about the perception of social affordances in terms of somatic markers generated by "as-if loops," which tell us what it would feel like to live through the multiple imagined scenarios possible in a situation. We could then connect with Jonathan Haidt's "social intuitionist" model of moral psychology, where somatic markers are the mechanism for the generation of moral intuitions, the feeling of what would be the right thing to do in a situation. Haidt and others claim that the content of such moral intuitions comes from social learning while the potential for moral intuitions as such has come to us via group selection. Such embodied generation of intuitions in concrete social situations is why case studies are my preferred methodology; it also forms the basis for my argument for re-conceiving the basis of the right to privacy as singular pattern of social / somatic interaction rather than sovereignty as subjective rule over the body.

There are still many things to say here, for it seems arbitrary just to say singularity is better than sovereignty for grounding the right to privacy. But we can prepare for my argument by noting that our analyses so far have been adult-oriented. Now emergence is not only synchronic (part / whole) but also diachronic (developmental). When we consider development, sovereign control of an organism is undercut from the start. We could begin with research from the developmental psychologist Colin Trevarthen on rhythmic caregiver-infant interactions which are crucial for "primary intersubjectivity," "emotional regulation" and "emotional bonding." In addition, Bruce Wexler's recent *Brain and Culture* is a good compilation of evidence not just of psychological disturbance from young animals deprived of affection, but various physiological and

immune system deficiencies. With this in mind we can conclude that we have never been sovereign rulers of a substance, or, perhaps better, that if we try to achieve such sovereignty by isolation, we become sick; human nature is to have always already been patterns of dynamic and relational social / somatic interaction.

I can't resist here taking just one more moment before we get to the Schiavo case. None of this discussion of human nature as bio-psycho-social is new in the history of philosophy; the unfortunate fact is that the question has almost always been how we were to mold, or better, to keep the emphasis on rhythm, how we are to harmonize ourselves to be autonomous and self-sovereign. In this regard, Plato saw rhythm as a bio-social factor in need of strict philosophical control. Besides famous passages on *musikē* in the *Republic*, there are less well-known but fascinating bits about nurses' lullabies in *Laws* 7, as well as the privileging of Marathon over Salamis *Laws* 4. William McNeill's analysis of the latter in his *Keeping Together in Time: Dance and Drill in Human History* reveals the rich interplay of social and somatic, as he posits a Plato worried about the solidarity among the lower classes caused by the entrainment produced by rowing as greater than that induced by the hoplite experience in the phalanx.

There's much more to be said but let me now turn to the case study.

BIOWPOWER AND BIOPOLITICS

We can begin by noting that the Schiavo case was not a precedent-setting singularity in the right to privacy line, in which *Griswold* and *Roe* are the most famous cases. The ruling decision here for "end of life" issues concerning PVS cases is the *Cruzan* case of 1990. The Supreme Court in *Cruzan* "assumes" that "the United States Constitution

would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition" (497 US at 279). This right can be exercised by proxy, but "a State may properly decline to make a judgment about the 'quality' of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual" (497 US at 282).

With this notion of an "unqualified" State interest in "life," we turn to Foucault and Agamben. Here we must distinguish biopower and biopolitics, material production and (quasi) legal predication. For Foucault, biopower is modern and productive, "fostering life or letting die"; this affirmative productivity distinguishes it from sovereign power, with which it today co-exists, whose negativity is expressed in the formula "kill or let live." Biopower is material production, producing capacities in individual bodies as it regulates populations. While Agamben acknowledges the Foucaultian thesis of the modernity of biopower, he will claim that sovereignty and biopolitics are equally ancient and essentially intertwined in the originary gesture of all politics; sovereignty is the quasi-legal power to decide the state of exception whereby bare life or zoē is exposed "underneath" political life or bios (Agamben 1997 passim; 2005: 4, 87-88). In terms we will explore later, the person ceases and the organism is exposed, by fiat.

Agamben finds in the concentration camp the modern biopolitical paradigm, in which the state of exception has become the rule and we have all become [potentially] bearers of exposed bare life. This sounds melodramatic, until we recall the powers claimed by the Bush Administration with regard to the naming of anyone as an "enemy combatant" (Agamben 2005: 3). The exposure of bare life occurs via what I want to call

a "de-politicizing predication," the converse of which is a politicizing predication, often implicit or assumed, existing only by the grace of having not (yet) been de-politicized: the retention of the rights of a citizen or the status of person.

I argue that Agamben's concept of (de-) politicizing predication cannot handle the Schiavo case and other similar cases of "end of life issues," because of its lack of purchase on real material change as opposed to the change in juridical status effected by (de-) politicizing predication. What we need is Foucault's materialist genealogy of biopower's investment in real bodies and Deleuze and Guattari's notion of "destratification." A key difference here from Agamben's analyses is that Terri Schiavo suffered a real, ontological, destratification, while Agamben is concerned with the "incorporeal transformation" or change in juridical status that reveals bare life.²

The key for us is that the diagnosis of PVS is not a de-politicizing predication. The import of the Cruzan decision is that PVS, far from removing rights, does not remove the right to privacy involving refusal of life-sustaining medical treatment, including feeding tubes. The problem is to think how rights can be exercised by proxy as they were recorded from before the onset of PVS. Because, I will argue, with PVS we see the cessation of the person and the exposure of the organism, not by quasi-legal fiat, but by real, physical, changes that a diagnosis merely records.

My second point regarding the limitations of Agamben's usefulness in the Schiavo case is that we are not concerned with third-party judgments as to inferior quality of life authorizing euthanasia, but with the desire of some to construct an inescapable State interest in fostering the life of the favored group, those graced with an implicit politicizing predication, which some want to have over-ride or at least make more

difficult the execution of the recorded wishes of the person. I'm speaking here of the "err on the side of life" proponents, those who would erect more and more legislative barriers to the removal of feeding tubes in PVS cases. Virtually all of Agamben's analyses in Homo Sacer and Remnants of Auschwitz concern the way in which bare life is exposed, excluded from law, threatened, while bios, politically-informed life, is protected. But in the Schiavo case we are concerned not with exclusion of zoē, but with its inclusion, with a bare life that the law holds close. In the Schiavo case, if you recall, we saw the almost incredible spectacle of the United States Congress passing a law whose intention was to allow the parents legal means to stop the removal of a feeding tube.³ Here we saw a raw exercise in biopower: the State's indirect control of physiological processes.

FOUCAULT'S GENEALOGY OF MATERIAL PRACTICES

I will have to skip the details, but I'd be happy to discuss them later. I focus on three areas in which Foucault enables us to think the Schiavo case in ways that are not the focus of Agamben's work: (1) medical intervention and the "administrative supplement" in hospital / hospice palliative care⁴; (2) the sexuality and racism elements in the Schiavo case⁵; (3) hints as to a transformation of right to privacy jurisprudence away from the sovereignty paradigm.⁶

PERSONALITY, PERSONHOOD, ORGANIC SYSTEM

Terri Schiavo suffered a heart stoppage in February 1990 brought on by drastically lowered potassium levels. The heart stoppage cut off oxygen to the brain. The cortex suffers permanent damage after 6-7 minutes, but the brain stem can survive up to 20

minutes without oxygen. The paramedics arrived in that interval between cortex destruction and cessation of function of the brain stem.⁷ The anoxia resulted in PVS, a bizarre and frightening condition. As we will now see, much of the pain, anger, and sadness in this case came from one particular quirk of the human constitution that provides a compelling case study in human being as the imbrication of the social and the somatic.

That quirk is the following: reflexive facial movements can both provoke a proto-empathic identification and be interpreted as indicating subjectivity. Many of you by now have seen the videos of Terri Schiavo's face. Many people, but her parents most of all, looked at Terri Schiavo's face and felt a powerful emotional bond and read subjectivity behind it.

Let me take a moment and discuss empathy. The most basic component of empathy is what is known as 'emotional contagion' or a shared affective state: that is, you feel what another person is feeling. We will refer to this as 'proto-empathic identification'. In recent philosophy, empathy is involved in the controversies surrounding 'Theory of Mind', that is, our ability to attribute mental states to others. Here we first find 'Theory Theory', in which the perception of others leads to inferences as to the affective cognitive states to be attributed to them. Next we find simulation theory, which holds that the perception of others triggers a separate internal modeling that enables the attribution of affective cognitive states to them (Ratcliffe, 2007). While Theory Theory is a "third-person" standpoint, simulation theory is a 'first-person' standpoint; the discovery of human 'mirror neurons' (which fire when we observe a goal-oriented action) gave a great boost to simulation theory (Gallese and Goldman, 1998).

The most current scholarship on mirror neurons and empathy (Decety and Lamm, 2006) does not rely on action-oriented mirror neurons as did early work, but on what Gallese, Keysers, and Rizzolatti (2004) call ‘viscero-motor centers’. An important set of confirmation findings are those of Singer et al. (2004), in which ‘empathy for pain’ is correlated with increased activity of the anterior insula and the anterior cingulate cortex, which map the viscera.

A third approach to empathy comes from phenomenological accounts. For the phenomenologists, a field of directly felt corporeal expressivity or ‘primary embodied intersubjectivity’ grounds our ‘pragmatic interaction’ with others (Gallagher, 2005, p. 223; see also Thompson, 2001, and Ratcliffe, 2007). These phenomenological accounts are thus a ‘second-person’ standpoint, as opposed to the first-person simulationists and the third-person ‘Theory Theory’ proponents. For the second-person phenomenologists, empathy is grounded in a primary corporeal intersubjectivity in which body expressions of the other are immediately felt as meaningful.

Whatever we say about Theory of Mind and the grounds of empathy, we can see in the Schiavo case how proto-empathic identification, projection of subjectivity, and perception of the face are intimately linked. This sort of identification and projection of subjectivity via the face is well-placed in forming an emotional bond and in beginning a "scaffolding" subjectivity-inducing loop between infant and care-giver (Hendriks-Jansen 1996: 252-277) – along with the rhythmic corporeal interactions Trevarthen discusses. But the provoking of proto-empathic identification and the projection of subjectivity in this case was a cruel trick, an evolutionarily adaptive capacity perversely out of place in PVS. Face-provoked emotional bondings and subjectivity-inducing interactions help

infants develop, but Terri Schiavo would never again develop, once she fell into the state we name PVS. A lot of sad affect was generated from saying "they are starving a person to death." But this comes from applying the proper name of a person, "Terri Schiavo," to an organic system. It is neglecting the drastic destratification suffered in this case, an irreversible move from the subjective to the organic.

The key in understanding the destratification in the Schiavo case is to distinguish personality, personhood, and organic system. On one level, considering the organic system in the hospice bed, there is no personality as singular pattern of social / intersubjective interaction. Singular patterns of embodied and embedded social interactions (unique mannerisms and sense of humor and so on) are a marker of "personality," that which distinguishes persons from each other. As the organic system in the hospital bed only offers generic physiological behavior (heart beats, lung movements, reflex muscular withdrawals of limbs from positions in which cell damage occurs), in that sense, there is no personality in the hospice bed, but that's only an a fortiori conclusion from the claim there is no person there.

Now if you want to distinguish personhood from the state of being an organic system, what you want are generic social interactions. We don't want any consideration of personality to impact personhood, any more than we want considerations of racial, religious, or sexual categories. In fact, we define personhood generically to protect the diversity of personalities. This doesn't mean we shouldn't distinguish legal personhood and legal competence, however. A legal person is an entity recognized by the community / state as belonging to the category of person, while a legally competent person is a subset of that category. A child is a legal person, but not a legally competent person; we treat

them as persons to protect their potential for personality; it's furthermore well-settled that third-party judgments have to be in the best interests of children.

Real problems come with "developmentally disabled" children whose potential for social interaction is limited. Now it's surely the case that we have learned a lot more about the potential of Downs children when we take seriously the fostering of that potential. The question comes with "profoundly disabled" children, those who, looking backward from the end of their lives, never developed much or any capacity for personality as singular pattern of social interaction, or even personhood as generic pattern of social interaction. The logic of my argument, which defines personhood as generic social interaction, is that they were never persons, that they were "almost-persons," beings that had things turned out differently might have become persons. Yet as soon as I say that I have to add that I also feel they always deserved the full protection of the category of children as persons, that is, the guarantee that all third-party judgments had to have been in their best interests. The key term here obviously is "potential." Since we can only ever *retrospectively* say that non-development indicated a lack of potential, we can never say *prospectively* what the limits of a being's potential are. So all children, no matter the prospective diagnosis of their potential, deserve the category of person.

Here is a good time to remind ourselves that third-party judgments as to the best interests of non-legally competent persons were not an issue in the Schiavo case. At stake was the execution of *her* judgment, made while she was legally competent, but exercised by proxy after she ceased to exist as a person. A legally competent person will engage in generic social interaction (the person can answer to his or her name just like everyone else, can reason like everyone else [cf. the "reasonable man" legal standard], can pursue

and / or defer pleasure like everyone else). The question is whether to treat adult PVS cases, which clearly do not now meet the criteria of legal competence but once did, as a person, or whether we should propose another category for them. They once were persons, and now can no longer engage in the generic social relations that define full legally competent personhood. In PVS, we see only singular production of endogenously generated activity or singular reaction to subsocial stimuli (sounds or noise rather than social signals). The pattern of blinks and smiles and other reactions displayed by an organic system in PVS is utterly singular, unique to that system and its degree of damage and length of time from injury, and so on. Now given enough time, these blinks and smiles will coincide now and again with the production of social signals from others, leading to an illusory projection of subjectivity and a false proto-empathic identification, a horrible discrepancy between a wide-spread human capacity deeply rooted in our evolutionary past and deeply connected to love and empathy, and the irreversible condition known as PVS.

Thus we have only a homonymic relation between "Terri Schiavo" the person, who ceased to exist when the system bearing her name slipped past a threshold of oxygen deprivation that destroyed her cortex but spared her brain stem, and "Terri Schiavo" the material system, the assemblage of body and tube, in the Florida hospice. You could translate it in the following manner, but it is the sort of dualistic language the material systems perspective seeks to avoid: what was in the hospice bed was only the body that used to support the person of Terri Schiavo. Thus all the emotion generated by the trope of "starving a person to death" is a category mistake: what is being done is ceasing to support autonomic processes that at one time supported a person but now only support

themselves. More precisely, and less dualistically, we have a material system which once took part in generic social interactions, but now only displays the behaviors of bare organic function. What used to be a person is now only an organism.⁸ This means that far from being a case of euthanasia, the Schiavo case wasn't even a case of assisted suicide, if suicide is a person targeting the organism in order to withdraw from social interactions, to cease being a person. PVS cases have *already* been withdrawn from singular and generic social interaction. Here the person targets the organism which is something like the remains of the person, just as the corpse is the remains of the organism.

LIFE, DESTRATIFICATION, SACRIFICE

This "targeting" of the organism in PVS cases sometimes poses a conflict between the recorded and proxy-executed wishes of a former person and the self-valuing of an organism. From a Varelean autonomous systems perspective, a conatus-like self-valuing appears in the sense-making of all life, even unicellular organisms. Sense-making is three-fold: (1) sensibility (ability to sense difference in the environment); (2) self-valuing (the ability to 'meaningfully' distinguish what is good for the organism from what is bad for it); and (3) orientating the self in the environment with regard to its "judgment" as to what is good and bad for it. But such self-valuing is not sufficient for personhood, though it may be worthy of respect in some cases. But surely the use of anti-bacterial agents to aid ailing persons has to outweigh the consideration we might want to extend to bacterial self-valuing, even when we note the overuse of antibiotics which has bred super bacteria.

The glory of a personality, and the reason it trumps the organic system from which it emerges, is that it is free from automatic self-valuing, and can value others,

sometimes even to the extent of sacrificing its own organic system. Sacrificing. Making holy. In confronting biopower we have to preserve room for the sacrifice some might wish to make. Another confrontation with Agamben is necessary here. For Agamben bare life is exposed by an incorporeal transformation, a change in juridical status, so that the bearer of bare life can be "killed, but not sacrificed." That is, bare life is beyond both human and divine law and the killing can come from outside with impunity. But in PVS we see a real ontological destratification rather than an incorporeal transformation or change in status, and the killing is not even suicide, but, to coin an awkward word for a strange situation, "organism-cide," that is, the targeting of the organism by the former person. It's sacrifice, but not self-sacrifice, if by "self" we mean the coincidence of organism and person.

Should anyone say there is no evidence Terri Schiavo wanted to make such a sacrifice, I say there is no evidence she did not, and much of the paternalistic speechifying surrounding the case robs her memory of the dignity of an other-directed motivation in not wanting to continue tubal feeding after her person had ceased to exist. What I mean is this: it is possible Terri Schiavo did not want tubal feeding simply to allow some peace of mind to come to her loved ones. In other words, in wanting the organism bearing her name to die if ever trapped in a PVS, her concern was not with herself, but with her loved ones, husband, parents and siblings. An other-directed motivation for refusing tubal feeding would not be to avoid the nothingness of PVS, the horror of the "locked-in" state (in which cortical function and consciousness is spared but motor control is cut off), or the gray zone of the MCS (minimally conscious state), but to allow some peace of mind, closure, and the ability to grieve, to come to our loved ones.

We should not "err on the side of life" as the slogan would have it, but err on the side of saving room in this world for sacrifice, that is, freedom from the blind and automatic self-valuing of organic systems, when that self-valuing, supported by technology far beyond the imagination of the culture in which traditional moral intuitions are formed, would cause an irresolvable pain not to the organic system, but to the others the person loves. "Irresolvable pain" means here the pain of not being able to grieve. I would even go so far as to say the default setting should be an opt-in position: only if you specifically request extraordinary measures in futile situations as defined by current medical science and safeguarded by ethics boards should you get them. Thus only if you want to tie your family's hands and exhaust the family wealth in waiting for a miracle or in offering your body to quack "therapies" would you be able to subject them to that.

INTENSITY, SINGULARITY, PRIVACY

To conclude, I want to sketch an argument for re-defining the ground of the right to privacy from sovereignty to singularity, that is, from control of the body to exposure to affect. The turn to rights is never simple in the context of medical discipline and biopower. Foucault describes a "bottleneck" formed by the intersection of the right to life, medical biopower, and personal sovereignty: "having recourse to sovereignty against discipline will not enable us to limit the effects of disciplinary power.... We should be looking for a new right that is both antidisiplinary and emancipated from the principle of sovereignty" (2003: 39-40). The right to privacy should not be founded on sovereignty, on control, on the subject as ruler of the body, but on singularity, as exposure to intensities that perform a de-personalization. The person should not be seen as the

subjective ruler of a sovereign unit, but as a generic pattern of social / somatic interaction. But it's precisely the potential for the person to depersonalize, that is, for the potential for the generic to become singular that grounds privacy as singularity. Here we have to recall our notion of depersonalization as opening to the virtual via the intensity of affect. What do I mean by that? Trapped in habits, we tend to "recognize" situations rather than live them; we tend to fit them into ready-made concepts rather than feel their creative potentials. But by de-habituation or "unlearning" we can open ourselves to the potentials for novel "social affordances." As we have claimed, affect is the feeling for this variation; it is the intensive or impersonal, the de-personalized, the de-habituated, as access to the virtual, to the differential field or multiplicity of the situation. It is the feeling of change in the relation of bodies politic, a feeling of the body in relation, and the feeling of how the present feeling might vary in relation to what might happen next in a variety of futures. Affect then is an intensive individuation, the resolution of a complex differential field, integrating changes in the relations among changing bodies politic. Affect is the way we become ourselves as singular patterns of social / somatic interaction.

It is this intense affect of moral intuition generated in concrete situations that lies behind the justification of privacy as singularity. The parties to a case are those who feel most intensely and "accurately," that is, they bring forth or express a certain singular relation of multiplicities forming the problematic field of any one case. It is this singularity that defeats morality as the laying down of abstract rules, and that requires that we articulate a principle of singularity for jurisprudence. It is not abstract reasoning about "the sanctity of life" but the intensity and accuracy of affect generated by exposure to the extraordinary that is our guide. If you want to feel something of that intensity and

accuracy, you can try a thought-experiment involving your own loved ones: how do you want them to feel if you were in a PVS? (Please note that I'm not asking what *you* would do for a loved one in a PVS, but what you would want *them* to do if you were in a PVS.) In other words, how much do you want them to suffer from your condition? Such a thought experiment would be neither Heideggerian nor Levinasian, though it might be closer to the latter. It is not Heideggerian, for it does not concern the impact of the thought of your death on your actions; nor is it Levinasian, for it does not concern the effect the death of the other will have on your subjectivity. The thought experiment will not give you back to yourself in Heideggerian authenticity, but it will (we would expect) depersonalize you via the depersonalization undergone by your loved ones as you imagine how they would be exposed to a singular and intense situation. It will, I would expect, knock you out of your habits of thought—the intensity and accuracy of the affect would "shock you to think" as you think about how your loved ones would feel.

The name of this mutual depersonalization, this intensive becoming, for Deleuze and Guattari? Love. "Every love is an exercise in depersonalization ... and it is at the highest point of this depersonalization that someone can be named, receives his or her family name or first name, acquires the most intense discernability in the instantaneous apprehension of the multiplicities belonging to him or her, and to which he or she belongs" (Deleuze and Guattari 1987: 35). One of the ways to the new non-sovereign right to privacy we search for must be through such depersonalizing and singularizing love, the sacrificial love that Terri Schiavo had for her loved ones, for her husband and for her parents and siblings, a love that, obscenely, we glimpsed in the media spectacle to which they were subjected.

NOTES

¹ We could also look at neurodynamics. We can see the embodied and embedded nervous system as a pre-individual *virtual* field: (1) a set of reciprocally determined differential elements (in other words, neural function is networked: there is no such thing as the function of "a" neuron anymore than "a" phoneme has a function; the function of a neuron derives from the firing pattern into which it is temporarily recruited; (2) with differential relations as linked rates of change of firing patterns; (3) marked by singularities as critical points in those relations. The dynamics of brains are *intensive* processes, that is, they are driven by difference gradients within neurons and between areas of the brain. Each neuron is sensitive to the changing rates of change of its inputs: it differentiates them, in the sense of deriving the instantaneous rate of change. The self-organization of a "Resonant Cell Assembly," that is, the transient emergence of a coordinated firing pattern, is an integration of that dynamic differential field.

² We should also recall that Agamben clearly shows that Deleuze's notion of "a life" is not comparable to the Aristotelian notion of "nutritive life" that allows for the attribution of life to a subject and that would thus be congruent with the isolation of bare life upon which can be made the series of distinctions sought by biopolitics. See Agamben's essay "Absolute Immanence," where he comments on Deleuze 2003 (Agamben 1999b: 232-233). We should note further that Homo Sacer conducts its analyses of current medical technology in the chapter on "politicizing death" in terms of coma, not PVS, and further, as if the bare life in question was located in a zone of indistinction between human and animal: "the comatose person has been defined as an intermediary being between man

and an animal” (Agamben 1997: 165), when precisely what is in question in PVS is the relation of human and “vegetative” life, or in my terms, the relations among personality, person, and organic system, when all three are seen as complex material systems.

³ Technically speaking, the US bill signed into law on 21 March 2005 (Public Law 109-3) allowed federal court jurisdiction for the purposes of a *de novo* review (i.e., ignoring previous state court rulings on matters of law) concerning "the alleged violation of any right of Theresa Marie Schiavo under the Constitution or laws of the United States relating to the withholding or withdrawal of food, fluids, or medical treatment necessary to sustain her life." The Schindlers' (Schiavo's parents) attempts for a TRO were denied however on the grounds that they were not able to show a "substantial likelihood of success on the merits" of the suits they planned to bring. Finally, the US Supreme Court declined to hear the Schindlers' appeal of the 11th Circuit Court of Appeals ruling (05-11628) that the aforementioned Public Law 109-3 was unconstitutional.

⁴ In “Society Must Be Defended” Foucault mentions the 1976 Franco case as an example of medical intervention creating an encompassing biosphere of trapped bare life (Foucault 2003: 248-49; see also Agamben 1999a: 83). With Franco—and in the US, the contemporaneous Quinlan case (70 NJ 10 [1976])—we see the establishment of a disciplinary (and hence individualizing) medical power able to defer somatic death, and with which our sovereignty-based jurisprudence struggles. Who is to decide the end of treatment? But just as prison administration provides what we could call a "carceral supplement" to legal power in the criminal system (Foucault 1977: 16, 246-47), so does hospital administration, in the form of "palliative care," enable the system to operate: everyone has to die, sometime; care has to stop, sometime. Since the ruling distinction is

active versus passive procedures, rather than the intent to "cause" death, hospital and hospice care can only aim to relieve pain rather than intend to hasten death (Rawls et al., 1997). Of course there is sufficient gray area here in establishing dosage guidelines so that palliative care can have the "unintended" consequence of "hastening" death ("hastening," that is, as compared with a completely tendentious "natural" standard), as long as the intention was only pain relief. This day-by-day hospital work escapes legal and media attention except in the rare cases—like Schiavo's—where a mediastorm occurs.

⁵ The intersection of medical discipline of individual bodies and biopower regulation of the population, Foucault reminds us, occurs in sexuality and in racism (Foucault 1978: 149-50; 2003: 257-63). The Schiavo case confirms the sexuality angle: Her bulimia can be analyzed, following Bartky 1988 and Bordo 1993 as a mode of governmentality, as self-discipline of female corporeality, the "tyranny of slenderness" (Chernin 1994). We need to note that the 1992 malpractice suit brought by Michael Schiavo was against the fertility doctors Terri Schiavo was consulting to help her get pregnant. They should have diagnosed her bulimia as being the cause of her having stopped menstruating, the jury ruled. This lapse in medical discipline regulating fertility led to Terri Schiavo's breakdown and her body being caught in a medical assemblage, with the feeding tube being only the most famous component. But a significant one, as it necessitates entry into the body. The right to refuse medical treatment is grounded in the common law right of informed consent, in turn grounded in sovereign control of bodily integrity. And with bodily integrity, we obviously touch upon central and profound gender issues related to

the construction of bodies politic. Who has entry to her body? Who has control over that entry?

Regarding the intersection of gender and race, we must also note that the people at the heart of the three most famous American "right to die" cases—Karen Quinlan, Nancy Cruzan, and Terri Schiavo—were all middle-class, white women who were childless at the times of their accidents. We might go so far as to say that the "culture of life"—as the current PR campaign of the anti-abortion forces labels itself—enveloped them, refusing to let them go. Potential givers of white life at a time the white race faces being out-bred by other races, they were in need of phallic domination: give her the tube of life, whether she wants it or not. An ugly thing deserves an ugly name: we might even have to call the forced insertion of a feeding tube "tube-rape" (Beyerstein 2005). Now the racism in some biopower decisions can be overt: Sun Hudson, the first patient to be taken off life support under a Texas law, signed by George W. Bush while governor, which allows hospitals to remove life support from indigent patients over family objections, was black (Mayo 2005). But in the American case, it is more often the "social racism" Foucault talks about (Foucault 2003: 261), directed against the economically unproductive; the marker of that unproductivity being their lack of insurance. They can't compete, they are weighing us down, their death purifies our body politic as we compete in the global market. Of course many of these economically unproductive are black, but many of them are white as well.

⁶ Jurisprudence. The Schiavo case was resolved by means of the right to privacy as the right to die, but we want to be wary here, for we remain trapped at the intersection of discipline and biopower if we ground that right in sovereign rights of personal autonomy,

which is the theoretical base of current American jurisprudence on "end of life issues." Strictly speaking, the law concerning assisted suicide that formed the basis of Washington v Glucksberg 521 US 702 [1997])⁶ or hospital removal of life support in futile care, as in the Sun Hudson case, are tangential to Schiavo as they concern terminal cases. Of course, you could argue that Terri Schiavo was always terminal and the medical intervention in her case is only death-prolonging rather than life-sustaining. In all seriousness, we will have to rethink the horror movie cliché of the "undead." But to understand that claim, we have to turn to the medical and biological issues.

⁷ For those of you who have heard the "abuse" meme circulating as a possible explanation of the collapse, you should know that the homicide police called by the paramedics as a matter of course when an apparently healthy young woman collapses suddenly at home found no sign of struggle in the apartment or sign of trauma on Terri Schiavo's neck or face. Of course you can't conclude conclusively from a negative, so the abuse meme can live on, though probably in a more hostile overall environment, as its plausibility is damaged. It can thus only reproduce in the most favorable environments, the brains and blogs of the American far right wing. Given the fact that it has lived this long, even in the face of the police report as well as the utter implausibility of supposing that an allegedly abusive Michael Schiavo would then turn around and give Terri Schiavo's doctors a million dollars worth of motivation to discover that abuse, we can conclude that those environments are quite forgiving indeed to that meme!

⁸ I wish I had time to discuss Jeff McMahan's *The Ethics of Killing: Problems at the Margins of Life* (Oxford, 2002). This is a major book; there's no question of anything more than a brief discussion. But he's very clear that you have to take metaphysics,

philosophical psychology, neuroscience, politics, and ethics together, and I certainly share that perspective. I'll make three points.

(1) McMahan calls his approach to defining the person the "embodied mind" approach. He changes Derek Parfit's criterion for personal identity (at least half the normal psychological continuity), to any degree of psychological continuity plus *those parts of the brain* responsible for "physical and functional capacities, particularly the capacity for consciousness" (69). But this underplays considerably the radicality of the well-known 1991 book by Varela, Thompson and Rosch, *The Embodied Mind*. This manifesto of what became known as the "enactive" school puts cognition and consciousness in brain-body-environment loops. McMahan's approach is really an "embrained mind" and even then has a very questionable emphasis on the cortex as the site of the "neurological correlates of the contents of consciousness" (21) or NCCC. This leads him to relegate to "marginality" the brainstem contributions to affect as merely "the emotional hue of certain experiences and memories" (21). There's thus some highly questionable assumptions going on here: (1) (emotional) form vs (propositional) content of mental acts; (2) a localist position regarding brain activity; (3) and not only localist, but cortico-centric. A neurodynamicist approach would emphasize the need for integrating activity in distributed brain systems (though to be fair McMahan recognizes this at 86). You can't get away from these questions either on the technical neuroscientific level, or on the ontological level, for as we have seen, integrating a differential field is the key to Deleuze's dynamic interactional ontology.

(2) McMahan's use of brain transplant thought experiments as establishing the basis of personal identity in those parts of brain subtending consciousness doesn't show

what he wants it to show if you think about it from an enactive perspective. Just as Evan Thompson would say that the vat in a brain-in-a-vat thought experiment would really have to be a surrogate body in order to provide the sensorimotor loops needed for consciousness, it seems to me that a brain transplanted into a new body wouldn't be capable of clear consciousness at all (though perhaps it might have a dream state) until it successfully integrated itself with the sensorimotor loops it would have with its new body. And then I think the question of personal identity would be still up for grabs: couldn't we say that the new unit would have a third identity, neither brain, nor body, but the new brain-body unit? Certainly if you define identity as characteristic pattern of social interaction, which I think you have to: that's what "psychological continuity" and "consciousness" amount to: our being is distributed "transversally" rather than being centered in diachronic internal relations of memory of a particular viewpoint on the world (or in sovereign control of an interiority as with those philosophers who define persons as human organisms – McMahan cites van Inwagen here).

(3) So the biggest difference between us is McMahan's substance metaphysics, which is why he performs thought experiments to find out essence, "what we are." But with Deleuze's dynamic interactional ontology, we are what we can do with others. We only "are" in an ever-changing dynamic social field: we (as persons) are a generic pattern of social interaction, while as personalities we are singular patterns. Now what I find fascinating is that there are now proposals to define death licensing organ withdrawal for transplantation as "cessation of engagement with the world" rather than "control of organic function." This latter is precisely sovereignty as control, whereas the former locates the person in a web of social relations. There's an awful lot to discuss here on

many levels – not the least of which is that, as we have seen, the brain only develops somatic, physiological, immunological control properly by being part of embodied social / inter-corporeal / rhythmic / affective relations.