

Death, Power, and the Body: A Bio-political Analysis of Death and Dying

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Thesis submitted to the faculty of the Virginia Polytechnic Institute and State University in
partial fulfillment of the requirements for the degree of

Master of Arts
In
Political Science

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May 7, 2007
Blacksburg, VA

Keywords: Michel Foucault, Giorgio Agamben, Death and Dying, Power

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ABSTRACT

According to Michel Foucault, life has become the focus of an infinite amount of both micro and macro management strategies, the point of which being to optimize health and to prolong life. Foucault labeled such strategies as “bio-power.” While bio-power exists on many levels of society, my focus has been on certain medical technologies that have helped to expose the political nature of death by calling into question the time of death and who decides it. As the line between life and death has become more and more indistinct, Giorgio Agamben has argued that bio-politics turns into “thanatopolitics”—a politics of death. As Agamben argues, death is not a biological moment but a political decision. In this study I will focus specifically on reconsidering the relations of power surrounding the decision to stop preserving life in the particular space of the hospital room. I will then attempt to consider how our exposure to death in this space of power might be resisted using both the insights of Foucault and Agamben.

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Introduction

It is often observed that death is the only certainty in life, for to the best of our knowledge all things that live must one day die. Thus death is, and has arguably always been, a crucial part of mankind's everyday existence—whether we would choose to dwell on it or not. It is often remarked that death is “the great equalizer,” yet our experiences of death are quite different and quite unique to the historical moment in which we live. In other words, despite the fact that mortality itself is common to all beings, the death that you and I experience will be particularly modern. The question then becomes, what is distinctive about death in modernity? In his manifesto “The White Negro,” Norman Mailer addressed this question:

Probably, we will never be able to determine the psychic havoc of the concentration camps and the atom bomb upon the unconscious mind of almost everyone alive in these years. For the first time in civilized history, perhaps for the first time in all of history, we have been forced to live with the suppressed knowledge that the smallest facets of our personality or the most minor projection of our ideas, or indeed the absence of ideas and the absence of personality could mean equally well that we might still be doomed to die as a cipher in some vast statistical operation in which our teeth would be counted, and our hair would be saved, but our death itself would be unknown, unhonored, and unremarked, a death which could not follow with dignity as a possible consequence to serious actions we had chosen, but rather a death by *deus ex machina* in a gas chamber or radioactive city; and so if in the midst of civilization—that civilization founded upon the Faustian urge to dominate nature by mastering time, mastering the links of social cause and effect—in the middle of an economic civilization founded upon the confidence that time could be subjected to our will, our psyche was subjected itself to the intolerable anxiety that death being causeless, life was causeless as well, and time deprived of cause and effect had come to a stop (qtd. in Noys 1995, 13).

What Mailer suggests is that we are living a new collective experience of the time of death brought about primarily by the Holocaust and the threat of nuclear annihilation in the twentieth century, but perhaps rooted in modernity itself. In this new time of death, he claims, we live as if we were already “doomed to die” because we live a life saturated with the threat of death. While Mailer's insights might not accurately depict the

general experience of these events by individuals in Western culture, he has put his finger on a crucial gap in theoretical analysis—the modern experience of death.

One thing that this quote of Mailer's points to is that these forms of mass death rely on techniques of planning, statistical calculation and population control—techniques which I argue are closely related to modern bio-power. Perhaps it is this close relationship between these horrific examples and modern forms of power that produces what Mailer labels as an “intolerable anxiety” toward death itself. It could be that these forms of mass death are not aberrations of our modern culture but merely extreme examples of it. As Mailer points out, we are increasingly exposed to death in modern culture. In this piece I use the work of Michel Foucault and Giorgio Agamben to argue that this exposure to death is political, and thus I argue that we must incorporate the modern experience of death into our existing analyses of power and subjectivity.

I have begun my incorporation of death into power with an account of modern power itself. In this respect I have relied heavily on the work of Michel Foucault, a theorist whose ideas on power have greatly shaped the contemporary debate on the subject, as well as my own opinions. In fact, I believe it is difficult to analyze power in modernity without reckoning with Foucault one way or another, simply because he theorized power in a way radically different from those who had previously tackled the subject (Agamben 1995, 5). However, as a theorist, Foucault never attempted to write a book devoted to the study of power as an independent and fully observable entity. In fact, he believed this task to be impossible. Power, for Foucault, is something that continually circulates through institutions like blood through veins. It is never derived from a single source, nor can it be localized in a single body. Thus, for Foucault, power is not something that can be divorced from its points of application to study in some isolated environment (2003a, 29).

In his numerous writings Foucault was primarily interested in the way that power acts on individuals. His early work was largely consumed with the ways in which power—working through institutions—shapes individuals into subjects. By contrast, his later work focused on what he termed “technologies of the self,” techniques through which power can be taken up by individuals in such a way that it is possible for them to subjectify themselves. Power is everywhere, he contended. But rather than existing as a

repressive negative force, power exists in fluid, reversible, and unstable relationships (1980, 93). Individuals are highly situated in such relationships, not only integrally related to other persons, but to institutions as well. Thus, we cannot dissociate ourselves, even theoretically, Foucault claimed, from this vast network of connections in order to live up to the model of the autonomous individual that we so frequently envision ourselves to be in the West.

Power, according to Foucault, is frequently characterized in a negative way, meaning a power that forbids rather than a power that tells us what is best. While power still operates negatively in society through laws and other juridical mechanisms, the importance of such mechanisms, Foucault theorized, has been superseded by more productive forms of power. In the modern era, Foucault contended, there was a virtual “explosion of numerous and diverse techniques for achieving the subjugation of bodies and the control of populations,” thus forcing juridical forms of power into a subordinate role (1978, 140). These productive controls depend primarily upon knowledge: knowledge of populations and the individuals that comprise them. It is such knowledge (and the application of such knowledge) that, for Foucault, essentially constitutes modern power.

Several types of knowledges (*savoirs*) or disciplines were established in modernity that placed the body (both the body of individuals and the body of populations) under intense scrutiny. These disciplines comprise what might be collectively called the human sciences; psychology, sociology, medicine, criminology, etc. These disciplines utilize what Foucault identified as both individualizing (anatomopolitics of the human body) and totalizing (bio-politics of the population) techniques of power, techniques designed to observe, analyze, measure, and manage bodies (1978, 141). My first chapter will attempt to situate these technologies of power so that I may, in subsequent chapters, use Foucault as a point of departure for my analysis of death in modernity. According to Foucault it is important not only to realize that power has been exercised on and from bodies, but that the bodies of individuals and the bodies of populations are themselves products of the specific aforementioned disciplines. In other words, for Foucault, the most basic and innate aspect of existence, the body, cannot be

regarded as a product of merely nature, but instead, as a product of knowledge and power.

According to Foucault, life has become the focus of an infinite amount of both micro and macro management strategies, the point of which being to optimize health and to prolong life (1994e, 341). It is through particular disciplines that individuals are subject to both surveillance and modification strategies so that, as Foucault argued, the one thing that has become paramount in the modern age, life itself, can be best managed and promoted. Central to such strategies have been certain technological developments in both the fitness and medical industries, developments that have helped to disseminate both anatomo-political and bio-political strategies throughout the population. While it would certainly be possible, not to mention beneficial, to analyze advancements in the health and fitness industry as political techniques for the management of bodies, for the purposes of this study I am much more interested in biomedical advancements for Foucault himself claimed that “medical power is at the heart of a society of normalization” (1989, 197). Specifically, my interests lie in certain life prolonging technologies that, I will argue in my second chapter, have helped to expose the political nature of death in modernity by calling into question the time of death and who decides it. Indeed, many of Western politics’ most controversial contemporary debates center on the blurred boundary between life and death (abortion, euthanasia, organ donation, physician assisted suicide) dilemmas that has caused one of our principle generators of knowledge—the medical establishment—to undergo intense scrutiny.

Experts have come, in Foucault’s opinion, to replace the traditional guardians of social reality. It is the knowledge created by such experts that forms the norms with which we measure ourselves. Building off of this crucial Foucauldian insight, Giorgio Agamben claims that the dispersion of power to such figures (doctors, lawyers, advocates, philosophers, and even families) has given these individuals the power to decide between life and death, a power that was once reserved for sovereign authorities (Agamben 1995, 122). At the end of Chapter One I partially depart from Foucault’s analysis of bodies and power in order to introduce Agamben’s work which is focused more specifically on the political nature of death. While both Foucault and Agamben believe that our bodies are deeply politicized, Foucault suggested that death was the limit

to this power (1978, 138). I wish to reexamine this claim through Agamben who argues not only that death is *not* the limit of bio-power but that it is precisely that which is politicized by modernity's constant policing of what Agamben termed the "life and death boundary" (1995, 164).

I believe that such a departure from Foucault's view of death as articulated in *The History of Sexuality* is ultimately necessary because of the increased political salience of issues involving life and death decisions. Since Foucault's death in 1984 the so called "right to die movement" has intensified through its focus on such figures as Dr. Kevorkian, Anthony Bland, Karen Ann Quinlan, and most recently Terri Schiavo. Though in his life he only passingly addressed technological developments concerned with the production and termination of life processes—never directly responding to the emerging bioethical concerns of the late sixties and seventies—Foucault would have undoubtedly been concerned with the way in which the bio-political administration of life has been challenged by such technology and managed by the newly emerging bioethical discipline. It is my opinion that medicine has played a crucial role in creating and maintaining our modern identities, thus since death has become increasingly bound to medicine I argue that it is increasingly relevant to a Foucauldian analysis of modern subjectivity.

Agamben, on the other hand, addresses the intertwinement of medicine, death, and power through his analysis of the modern individual's exposure to death. According to Agamben, Western culture has become "thanatopolitical," which means that it is dominated by a politics of death that leaves us more and more exposed to both death and operations of power. For Agamben, death has become indistinct. It is both meaningful and meaningless, both individual and anonymous, both visible and invisible. Moreover, because modern society increasingly exposes individuals to death, liberal democracy becomes increasingly indistinguishable from totalitarian regimes, an issue I will explore in more detail in Chapter Three. While the issues that I am addressing—life sustaining technologies—are merely one symptom of the greater problem that Agamben is himself concerned with, I hope that shedding more light on this particular space of power can allow us to think about and eventually challenge the greater politics of death operating in modern society.

In this study I will focus specifically on reconsidering the relations of power surrounding the decision to stop preserving life in the particular space of the hospital room. According to Foucault's view, terminating life is nearly unthinkable in a bio-political society. Thus, as Benjamin Noys elaborates, we "try so hard to preserve life, even at the cost of terrible suffering, because death is the limit to [bio-political] power" (2005, 54). For Foucault, death has become "shameful," it is paramount to giving up, to letting go, or to admitting defeat (all things given a negative connotation in Western society) (2003c, 247). In this study I would like to reconsider these claims through Giorgio Agamben's argument that death has become more political as the boundary between life and death has become blurred. Such a state of being, he claims, exposes the body to death, and yet—as I am primarily concerned with—"saturates" the body with power (Agamben 1995, 164).

As suggested by this synopsis, I am using Foucault as the starting point for my study. Though I ultimately bring in Agamben who question aspects of his analysis of power, I begin my first chapter with an in depth account of the ways in which Foucault believed power to be exercised upon the body. In this chapter I begin to hammer out the theoretical framework that I will then both use and challenge in order to analyze the space of the hospital room as a space of power. In *The Birth of the Clinic*—Foucault's only sustained analysis of the medical discipline—he claimed that the body was suddenly made "exhaustively legible" with the birth of modern medicine. More precisely, he claims that it was "from the integration of death into medicine...that Western man could [at last] constitute himself in his own eyes as an object of science," grasping himself within his own language, and giving himself his own discursive existence (Foucault 1973, 197). In his later writings on power, however, Foucault gives this constitutive capacity of individuals to sexuality, not death, and as I have previously suggested, Foucault begins to look at death as a limit to power itself. Throughout this study I have attempted to reconcile this seeming contradiction in Foucault's work through the work of Giorgio Agamben.

My second chapter is an examination of what Agamben terms the "zone of indistinction" between life and death. For Agamben, the line between life and death has become increasingly blurred by a whole series of "waverings" around both the time of

death and the question of who decides on this time. As Agamben claims, this decision is increasingly taken up by the medical profession, thus in the conclusion of this chapter I return to Foucault's only sustained engagement with medical power, *The Birth of the Clinic*. In this section I argue that Agamben's analysis of the intertwining between the medical discipline and power might benefit from some of the historical insights provided in Foucault's analysis. While Agamben centers his analysis on post-World War II society, Foucault's work demonstrates that the entanglement of medicine and sovereign power have a far longer history than perhaps Agamben realizes or is willing to engage with.

In the third and final chapter of this study I examine how death is politicized. As Agamben argues, death is not a natural or biological moment but a political decision. In order to tackle the nature of this decision I look at the work of Peter Singer who compares two seemingly contradictory ethics, the ethics of the sanctity of life and the quality of life ethic. An Agambenean analysis of these ethics however, suggest some problems that Singer may have not been able to articulate because he fails to take into account the political nature of death. One of the criticisms that has been lodged against Singer is that his ethics closely parallels Nazi eugenics programs in which the medical establishment made decisions on whose life was worth living. This criticism bridges the gap between Singer's work and the point I have been making through this piece—bio-power is intimately enmeshed with sovereignty.

Foucault saw this combination at work primarily in totalitarian regimes. However, as Agamben argues, the distinctions between totalitarian regimes and democracies are crumbling. I argue in my Conclusion that modern power is increasingly an amalgamation between the bio-political and the thanatopolitical. For power can both manage life and expose us to death. What is crucial to take from this analysis is that we must formulate some sort of individual resistance to this power, even though techniques of modern bio-power (bureaucratic planning, statistical analysis, population control) may expose us to death as a population rather than as individuals. This resistance must be something greater than simply a call for physician assisted suicide or an appeal for individual ownership of our bodies, it must first center on an engagement with what about life is really worth preserving.

Chapter One

The Body and Power

On March 2, 1757 Robert-François Damiens was condemned as a regicide and publicly executed. Writing over two centuries later, Michel Foucault returned to the spectacle of Damiens' execution in the first chapter of his now famous book *Discipline and Punish* in order to illustrate pre-modern power in the eighteenth century. Damiens' punishment, Foucault revealed, was both a lengthy and ritualistic process, the mechanisms of which unmistakably differ from any punishment that we condone today. Foucault spares no detail in his account of the execution. After first being tortured at length with pinchers and boiling liquids, Foucault tells us that Damiens was sentenced to be drawn and quartered by a team of horses. Foucault then vividly recounts the difficulties of this task and describes how, after several attempts, the executioner was called in to finish what the horses could not. Consequently, instead of being drawn and quartered as dictated by his sentence, Damiens' limbs were hacked off one by one at the joints with the executioner's axe (1977, 4).

The public, Foucault points out, was an integral part of Damiens' punishment. They were the sovereign's captive audience—full participants in the spectacle—unable to turn away from the ghastly scene laid out before them. As participants, the audience bore witness to all of Damiens' screams and observed every instance of his doubtless pain. Hence, Foucault claims, turning his punishment into a purposeful spectacle for public consumption. After witnessing this ritualistic torture and botched dismemberment, the spectators then watched on as Damiens' reportedly still live torso was flung into a fire where he eventually perished. For several hours they watched as his body burned, Foucault recounts, until it was reduced to ash—effectively ending the spectacle for those who viewed it (1977, 4).

Though Damiens' plot to assassinate the King ultimately failed, his place in history was ironically assured by the manner of his death. Foucault, writing centuries

after his execution, turned Damians' death—which was little more than a historical footnote—into the definitive image of sovereign power through his book *Discipline and Punish*. On one level, this book traces the history of Western punishment. However, for Foucault, this history of punishment was merely a lens through which he could reveal his true interest: power. Thus, Damians' torture exemplified much more than an outdated method of punishing criminals, it was a precise visual image that Foucault could return to, and often did, in order to depict the mechanisms of power that he believed to operate in society up until the eighteenth century.

Foucault was careful to distinguish sovereign power from the mechanisms of power that emerged in modernity. For him, an essential aspect of modern power is its surreptitious nature—it works so well precisely because we are intent on looking for power in rules and laws; in prohibitive mechanisms rather than in productive ones. While Damians' execution was perhaps the last great hurrah for pure sovereign authority—as it would only be a few decades later that the French King himself would see his power stripped away by the cold steel blade of the guillotine—Foucault famously contended that, “in political thought and analysis, we still [have yet to] cut off the head of the king” (1978, 88-89). In other words, for Foucault, power is still represented in juridical terms despite the fact that deduction, the primary manifestation of sovereign authority, has become merely one element in a range of mechanisms “working to incite, reinforce, control, monitor, optimize and organize the forces under it” (1978, 136).

Throughout his life Foucault relentlessly reworked his own ideas, “he constantly ‘reread,’ resituated, and reinterpreted his early work” attempting to update what he had previously written in light of what he had since learned (Fontana & Bertani 275). Thus his collection of writings ultimately does not fit neatly together, most likely because he never intended to write a cohesive body of work in the first place. As such, I would like to lay the foundation for my foray into Foucauldian thought through an exploration of Foucault's complex concept of power, a concept that informed many, if not all, of his lines of investigation. In this chapter I describe Foucault's analysis of both pre-modern and modern power. Though I will be using mechanisms of modern power, specifically bio-power, in my investigation, I feel that in order to fully appreciate modern power as

Foucault described it, one must contrast its mechanisms to the type of power with which we are still most figuratively familiar, the power of the sovereign.

Throughout this chapter, I have paid particular attention to the way that different mechanisms of power work upon bodies. By making the body the focus of my examination of power more broadly, I intend to establish a basis for my impending analysis of bio-power and its relationship to individuals and their “right to die.” This chapter then concludes with a brief synopsis of Giorgio Agamben’s application and reinvention of Foucault’s concept of bio-power. As I shall describe in this chapter, Foucault and Agamben both share similar concerns with modern power (though they view sovereignty somewhat differently), however, they come to different conclusions with regards to an individual’s experience of death in modernity. Though I have used Foucault as the primary framework for this analysis, I will again return to Agamben in subsequent chapters in order to further rethink Foucault’s conclusion that death is the limit to modern power.

Sovereign Power

Sovereign power, Foucault claimed, was bound inextricably to the body of the King, a “double body” that consisted of both the transitory physical body of the actual sovereign, and an intangible immutable body representative of the kingdom itself (1977, 29). In pre-modern society, laws were considered to be direct extensions of the sovereign’s will, thus in breaking those laws one not only violated the immediate victim, but personally assaulted the sovereign himself. According to Foucault, sovereign power rested on the King’s right to seize any and all things—including the lives of his citizens when they posed a direct threat to his authority. This “seizure,” Foucault asserted, was to be held in public, as per the example of Damians’ torture and execution. Punishment was therefore the most visible manifestation of the sovereign’s power; the unequivocal act by which the sovereign exacted retribution in order to direct his people’s attention to “the dissymmetry between the subject who has dared to violate the law and the all-powerful sovereign who displayed his strength” (1977, 49).

Public torture was thus fundamentally a theatrical performance, the objective of which was to provide, for public consumption, a physical confrontation between the sovereign and the criminal; the most important aspect of which being a voiced confession

by the condemned. The confession symbolized the spontaneous exposure of the truth of the crime. If all went according to plan, the criminal, once having the experience of torture, would both judge and condemn himself in front of a public audience, thus legitimizing the use of torture on his body in the first place. Every aspect of this ritual hinged upon the body of the condemned. It was from the lips of this body that the truth emerged, it was through the visible body of the criminal that the crime was reproduced, it was on this body that the “vengeance of the sovereign was applied,” and it was through the submission of this body that the power of the sovereign was restored (Foucault 1977, 55).

All sovereign acts of power, according to Foucault, were extremely brutal and public so as to discourage future enemies from taking what the sovereign possessed. Because even the smallest crime was considered to be a direct challenge to sovereign authority, the sovereign was constantly seeking the elimination of his enemies. He eliminated foreign enemies through long and brutal wars, and he, as in the case of Damiens, eliminated domestic enemies through the act of a torturous public execution. However, despite its vicious spectacle, sovereign power was wholly one dimensional, its ultimate aim being “to reinforce, strengthen, and protect the principality, but with this last understood to mean not the objective ensemble of its subjects and the territory but, rather, the prince’s relation with what he owned” (Foucault 1994b, 232). In other words, the sovereign did not act to protect the land or the lives of the people who lived there. Instead, he acted to protect only his *ownership* of his territory and his subjects, territory taking precedence over the latter (Foucault 1994b, 232).

These observations of sovereign power came directly from Foucault’s reading of certain treatises, like *The Prince* by Machiavelli, written with the expressed objective of advising the sovereign on the most appropriate ways to wield his absolute power of life and death (1994b, 229). Though the sovereign’s power was said to be absolute, Foucault described his right over life and death as a “strange right” (2003c, 240). Though the sovereign was said to possess the power over *both* life and death equally, the sovereign obviously could not grant life in the way that he could inflict death. Thus, as Foucault claims, his power over the body was always exercised in an unbalanced way (2003c, 240).

Foucault argued that this right, a right that was thought to openly place the experience of both life and death squarely in the field of power, actually boiled down to one identifiable mechanism, the power to kill—the power of the sword (1978, 136). There was, he claimed, in fact, “no real symmetry in the right over life and death. It is not the right to put people to death or to grant them life. Nor is it the right to allow people to live or to leave them to die. It is the right to take life or let live,” to kill or refrain from killing, a right that was—in practice—perhaps weaker than what one might first conclude (Foucault 2003c, 240-41).

The Transition to Modern Power

According to Foucault, sovereign power was fragile and limited; he himself was much more interested in the types of power that would come to work alongside and eventually overshadow the sovereign’s power to inflict death. Accordingly, it was not treatises written to advise the prince that really fascinated Foucault, it was the emergence of, along side of these, treatises directed at the novel question of government (1994b, 229). These sixteenth century authors, Foucault surmised, were attempting to distance themselves from the conventional notion of sovereignty as absolute right by articulating, what he termed, an “art of government.” Moreover, questions of government, at this time, were not merely abstractly posed by a few political theoreticians. It seemed to Foucault that in this century government as a more general problem “exploded.” This idea of governing, he claimed, seemed to infiltrate every level of society as all manner of individuals began to question how best to govern themselves, their families, and their souls. Moreover, these same individuals began, perhaps for the first time, to question the ways in which they themselves were being governed (Foucault 1994b, 229-30).

This art of government sought to reconcile itself with the theory of sovereignty by attempting to legitimize certain aspects of sovereign power through the concept of a social contract (Foucault 1994b, 239-40). For centuries, the juridical edifice of society had served as a justification for sovereign power; it was created by sovereignty and exercised on behalf of sovereignty. “When in later centuries this juridical edifice escaped from royal control, when it was turned against royal power, the issue at stake [became]...the limits of that power—the question of its prerogatives” (Foucault 2003a, 25-6). Transformations in power, of course, did not happen all at once but they can be

traced through the theory of right. The essential role of the theory of right was to establish the legitimacy of power, a difficult task when legitimacy has to be given to a sovereign whose ultimate power is the power take life.

The jurists of the seventeenth century, Foucault contended, were already asking questions about this right of life and death. “The jurists ask: When we enter into a contract, what are individuals doing at the level of the social contract, when they come together to constitute a sovereign, to delegate absolute power over them to a sovereign,” what do they give up, what do they receive (Foucault 2003c, 241)? Thus, as Foucault claims, “the essential function of the technique and discourse of right was to dissolve the element of domination in power and to replace that domination, which has to be reduced or masked, with two things: the legitimate rights of the sovereign on the one hand, and the legal obligation to obey on the other” (2003a, 26).

Social contract theory assumes that as individuals we are all endowed with natural rights. However, as most manifestations of this theory argue, in order to enter into society individuals must give up certain rights to a sovereign power. While Foucault ultimately critiques the view that individuals make this choice for rational reasons (or that they make a choice at all), he recognized that the articulation of this theory was significant for the genealogy of power that he was attempting to piece together. Thomas Hobbes was the first modern philosopher to clearly formulate a view of human nature that implied the necessity of a social contract. For Hobbes, humans are essentially self interested, and being that they are self interested, their highest priority is self preservation. Though, according to Foucault, Hobbes laments the fact that life prior to society is “nasty” and “brutish,” it is ultimately the prospect of leading a short life that, in Hobbes’ mind, frightens individuals enough for them to enter into a social contract at all (2003b, 95-6). It is “the will to prefer life to death” that ultimately serves as the foundation for sovereignty. Thus for sovereignty to exist, there must be—and this is all there must be,” Foucault reasons, “a certain radical will that makes us want to live, even though we cannot do so unless the other is willing to let us live” (2003b, 95-6).

According to Foucault, mercantilism emerged at this time as the first “threshold of rationality” for this new “art of government” articulated by social contract theorists. The West’s new enrichment through commerce facilitated growth in pre-modern

societies, particularly in regard to the populations of these societies which were viewed primarily as a potential labor force (Foucault 1994c, 261). These changes in the late sixteenth and early seventeenth centuries posed difficulties for traditional sovereign authority. Thus in order to effectively govern and maximize the output of these larger populations, governments in Europe began to finally take an interest in the populations that they governed. It was with mercantilism, Foucault contends, that for the first time “we see the development of knowledge [*savoir*] of the state that can be used as a tactic of government” (1994b, 239).

It was the utilization of these new “sets of analyses and forms of knowledge,” what Foucault labeled as “knowledge of the state,” that really held his interest. It was through this knowledge, “in all its different elements, dimensions, and factors of power,” that mercantilism became more than a simple economic theory (Foucault 1994b, 238). However, Foucault claimed, mercantilism remained stifled “precisely by the fact that it took as its essential objective the might of the sovereign” (Foucault 1994b, 239). The instruments of power primarily utilized at this time, Foucault observed, were still laws, decrees, and regulations—the traditional weapons of sovereignty. Relying on these techniques effectively “immobilized” the newly emerging art of government—trapped it, Foucault argued, “within the inordinately vast, abstract, and rigid framework” of sovereign power (1994b, 239-40).

Nonetheless, Foucault was encouraged by what the appearance of this “art of government” demonstrated. According to Foucault, the mere appearance of these debates clearly indicates that as early as the sixteenth century “the problem of life began to be problematized in the field of political thought and in the analyses of political power” (2003c, 241). It was at this time that new techniques of power began to emerge, techniques of power that saw the individuated body as their primary field of knowledge, principal domain of intervention, and target for control.

Disciplinary Power

Power, as I have described it up until this point, has been based in some way upon the will of the sovereign. According to Foucault, “an important phenomenon occurred in the seventeenth and eighteenth centuries: the appearance—one should say the invention—of a new mechanism of power which had very specific procedures,

completely new instruments, and very different equipment” (2003a, 35). This new mechanism of power, Foucault stressed, was not merely a reconfiguration of juridical sovereignty, a mechanism that consisted purely of absolute power based upon “the absolute expenditure of power.” In fact, this mechanism was entirely based upon the production of “power with minimum expenditure and maximum efficiency,” something juridical sovereignty was utterly incapable of doing (Foucault 2003a, 36).

Foucault labeled this new type of power as “disciplinary,” and while he acknowledged its earlier presence in isolated examples, his point was that, in modernity, this type of disciplinary power extended its influence from society’s army barracks and monasteries to nearly every social institution. Disciplinary mechanisms, he contended, infiltrated the whole of society in the late seventeenth century when the first concerted efforts to arrange and control specific and identifiable groups of people took place. According to Foucault, the forces that are used to arrange and classify groups of people also render those people as individual units. The individual, he argued, is thus a construction of power created only when that individual is recognized as part of a larger and identifiable group—a group is not created by a mass of individuals, but vice versa.

According to Foucault, it is only through discipline that modern individuals are created out of a mass. Disciplinary power, he claimed, differs from preexisting power mechanisms in that it is applied “primarily to bodies and what they do rather than to the land and what it produces.” As a result of the propagation of disciplinary power, it at once becomes possible to “extract time and labor, rather than commodities and wealth” from individual bodies (2003a, 35). An important step, Foucault points out, for the budding capitalist economies of the time. Thus, for Foucault, this new mechanism of power was essentially “one of the basic tools for the establishment of industrial capitalism and the corresponding type of society” that we now associate with capitalist economies (2003a, 36). In fact, it can be argued that the pressing need to produce a labor force in the late seventeenth century sparked a refinement of existing disciplinary techniques—and the invention of others—in order to shape the bodies of individuals into the exact type of laborers that would be appreciated by capitalists.

The benefits of disciplinary power, Foucault explained, lie in its precise manipulation of the body so as to render bodies “both useful and docile” (Foucault

2003c, 249). “In short, [disciplinary power] dissociates power from the body; on the one hand, it turns it into an ‘aptitude,’ a ‘capacity,’ which it seeks to increase; on the other hand, it reverses the course of the energy, the power that might result from it, and turns it into a relation of strict subjection” (Foucault 1977, 138). All of this takes place, Foucault maintains, through the meticulous regulation of the body’s movement and the time and space in which it moves.

Specifically, there are three elements of disciplinary power that Foucault claims train the bodies of individuals to become both “useful and docile;” hierarchical observation, examination, and normalizing judgment. According to Foucault, the possibility of constant observation is crucial for disciplinary power to be effective. For capitalist factories to succeed, he maintained, they need to be architecturally and managerially structured so as to facilitate constant observation. Hierarchies must be established and workers must be monitored by those in positions above their own, thus inducing good work habits without the threat of physical violence. Moreover, Foucault theorized that it was not specifically constant observation that produced these results, for such observation of every worker would be both inefficient and impossible. It was merely the possibility of being observed that shaped the behavior of laborers—the mere possibility that someone, somewhere might be watching.

According to Foucault, those that are being observed need to be evaluated in an effective way. Thus a second element of disciplinary power is the examination. Workers are periodically tested on their abilities and their habits, however, the results of such tests matter little without some sort of standard of comparison. The third element of disciplinary power is normalizing judgment—this element is linked to Foucault’s earlier interest in the development of statistics; the gathering of knowledge about individuals. Through compiling such information, Foucault points out, it is possible to identify an “average,” a standard by which to compare individual behavior. For Foucault, it is ultimately the desire to be “normal,” that shapes individuals, their bodies and their minds. And “thanks to a whole system of surveillance, hierarchies, inspections, bookkeeping, and reports—all technology that can be described as the disciplinary technology of labor,” the power to define what qualifies as normal is taken completely out of the hands of those to which the standard is applied (Foucault 2003c, 242).

It is no accident that this form of power appears to be linked with another sense of the word “discipline,” meaning an academic field of study. In fact, for Foucault, disciplinary power is inextricably bound to knowledge itself, particularly the fields of knowledge that make the individual the object of study—psychiatry, criminology, sociology, psychology, and medicine. Together, the human sciences create a regime of power that, according to Foucault, controls, describes, and monitors human behavior in terms of norms. By setting out what is “normal,” the human sciences thus also intentionally create the idea of abnormality or deviation. The more abnormal and excluded you are, the more individual you become. Individuality is thus, for Foucault, not the desirable individuality of Liberalism—it is the mark of the mental patient, the convict, and the over-comatose. It has nothing to do with taking control over one's own life and everything to do with being controlled.

Bio-power

In the second half of the eighteenth century, Foucault identified the emergence of a new phenomenon, a new technology of modern power. According to Foucault, this new technology could be distinguished from those that preceded it by way that it manages individuals. Sovereign power, Foucault claimed, can only account for individuals as part of a “social body” constituted in broadly contractual terms. Disciplinary power affects the individual as only a body, as a machine with specific capabilities and uses. This new power, on the other hand, reformulates the existing disciplinary concept of the individual body as a species-body, “a multiple body...with so many heads that, while they might not be infinite in number, cannot necessarily be counted” (Foucault 2003c, 245). This new mechanism for managing individuals works, not at the level of individuality, but on a more totalizing plane.

This mechanism emerged only when it became necessary to rationalize specific problems that logically arise when a group of human beings live as a population. All civilizations, one may observe—regardless of their time in history or their relative size—experience similar problems like health, sanitation, birthrate, longevity, and race, not to mention other “aleatory events” that inevitably occur. This new technology of power, according to Foucault, operates both politically and scientifically in order to minimize a population’s vulnerability to such liabilities (1978, 139). This new technology, according

to Foucault, thus can no longer merely be formulated as an “anatomy-politics of the human body, but what [he] would call a ‘bio-politics’ of the human race” (2003c, 242-3).

Bio-politics aims to improve life through regulating, managing, and isolating those elements that threaten optimum existence. Its “purpose is not to modify any given phenomenon as such, [nor] to modify a given individual insofar as he is an individual” (Foucault 2003c, 247). Essentially, bio-politics intervenes in order to encourage what ought to be; it seeks to lower or modify the mortality rate, increase life expectancy, stimulate the birth rate, etc. Above all things, according to Foucault, bio-politics must establish regulatory mechanisms in order to achieve some sort of equilibrium for each biological process. Just like disciplinary mechanisms, it must “maintain an average, establish a sort of homeostasis, and compensate for variations within the general population and its aleatory field” (Foucault 2003c, 247).

For Foucault, both disciplinary and regulatory mechanisms are positive means for influencing individuals, meaning that instead of emphasizing what one cannot do—as done by a sovereign—these mechanisms emphasize what *should* be done. Foucault believed that both of these mechanisms are able to simultaneously operate in modernity because they ultimately “exist on different levels...operate on different scales and thus make use of very different instruments” (2003c, 242). Essentially, Foucault noted, they exist as two sides of the same coin, or rather, as two opposite poles (1978, 139). Bio-politics, even in its first formations, did not attempt to exclude or reject the established techniques of disciplinary power. In fact, Foucault contended, it was able to effectively embrace them, to “dovetail into [disciplinary power], integrate it, modify it to some extent, and above all, use it by sort of infiltrating it, [and] embedding itself in existing disciplinary techniques” (2003c, 242).

During the classical period, according to Foucault, there was not only a virtual explosion of disciplinary institutions—schools, workshops, hospitals; but also an upsurge in political interest for the specific problems that populations face (1978, 141). Foucault was particularly interested in the eighteenth century, because it was in the eighteenth century—as civilizations began to make a concerted effort to manage, measure, and evaluate these problems—that certain totalizing techniques were developed along side of the individuating techniques of discipline. For Foucault, this marked the beginning of the

era of “bio-power,” bio-power being the combined effort of the anatomic and the biological, of discipline and regulation, of individuating techniques and totalizing techniques.

According to Foucault, the powers of discipline and regulation are “situated and exercised at the level of life,” they are a constant force, relentlessly managing the details of life, administering its processes, and manipulating its circumstances (1978, 137). For Foucault, the contrast with sovereign power could not be more obvious. Pure sovereign authority, as exercised prior to the eighteenth century, was limited to the precise moment of some specific seizure—taxes, property, or life itself. It told individuals what they were forbidden to do, but did not expect them to *do* anything in particular.

Sovereign authority, Foucault emphasized, can only be exercised sporadically—periodically at best, and while it took little interest in the everyday lives of those under its control, it made claim to the exclusive power of life and death over those same people. It was a power properly formulated as the “right to *take* life or *let* live,” a power that, according to Foucault, was definitively improved upon by bio-power, the “power to *foster* life or *disallow* it to the point of death” (1978, 138). Thus, for Foucault “the old power of death that symbolized sovereign power [was] carefully supplanted by the administration of bodies and the calculated management of life” (1978, 139-140). Instead of seizing life, power thus begins to intervene in order to promote a “healthy” life, or in some cases, in order to defer death.

Death, in modernity, according to Foucault, is no longer a visible manifestation of power, “it is the end of life, the term, the limit, or the end of power too. Death is outside the power relationship,” he claimed, “[it] is beyond the reach of power, [for] power has a grip on it only in general, overall, or statistical terms” (Foucault 2003c, 247-8). As exemplified by Damiens’ execution, death in a society based upon sovereign power was the most public, the most obvious, and the most spectacular manifestation of sovereign authority. Even if one did not die by execution, death still had everything to do with power, as it was ultimately the manner in which one sovereign (the king) was relieved by another (god) (Foucault 1978, 138). In contrast, Foucault maintained, modern death is now “the moment when the individual escapes power,” the most secret and private aspect of existence (2003c, 248).

While death has become private for Foucault, bio-power, on the other hand, has brought life and all its mechanisms into the realm of the political. And as he contended, politics is now less and less about law—a negative power that forbids—and more about various positive forms of power. “Such a power has to qualify, measure, appraise, and hierarchize, rather than display itself in its murderous splendor; it does not have to draw the line that separates the enemies of the sovereign from his obedient subjects; it [instead] effects distributions around the norm” (Foucault 1978, 144). For Foucault, the norm is the one element capable of routinely circulating between both the disciplinary and the regulatory. In other words, “the norm is something that can be applied to both a body one wishes to discipline and a population one wishes to regularize,” for just as individuals have certain behaviors and regularities, so too does the population (Foucault 2003c, 252).

According to Foucault, the management of populations absolutely requires, among other things, an institution with the authority and capability to make certain prescriptions about how individuals should live—not just as individuals, but as members of a family, citizens of a town, and ultimately as elements of a state population. Thus the medical discipline was developed, a discipline which takes as its main function “public hygiene, with institutions to coordinate medical care, centralize information, and normalize knowledge” (Foucault 2003c, 243). The medical discipline tackled the problems that plagued populations in different ways. It employed both unobtrusive means like public health campaigns, but also direct interventions into the private lives of individuals. As it seemed, in the eighteenth century there could be no higher political objective than that of raising the level of health of the population as a whole. “The imperative of health,” Foucault concludes, was “at once the duty of each and the objective of all” (1994e, 341).

Bio-power was, for Foucault, a complete break both conceptually and practically from the forms of power that preceded it. Though sovereign power still operates in society, it is no longer the primary form of power. For Foucault, perhaps the biggest change from pre-modern to modern power was that power could no longer be localized in a single entity or office. Power has become fragmented in modernity, it “is everywhere, not because it embraces everything but because it comes from everywhere” (Foucault

1978, 93). For Foucault, nothing could be more different than sovereign power and bio-power—just as sovereign power implies having the power over death, bio-power necessarily entails a similar power over life.

Giorgio Agamben & “Bare Life”

Though Giorgio Agamben comes to very different conclusions regarding power in modernity, Agamben nonetheless sees his work as continuing Foucault’s initial inquiry into power itself (Agamben 1995, 6). For the purposes of this study, I would like to link Foucault’s work on bio-power to Agamben’s thoughts on sovereignty in order to argue that power in modernity might simultaneously promote life and leave us exposed to death. Though I will be returning to Foucault in my two subsequent chapters, I will be using Agamben’s criticisms of Foucault to help stage my inquiry into the relationship between power and death, a relationship that Agamben claims characterizes our modern identity.

While Agamben seems to formulate a theory of power using Foucauldian concepts, Agamben argues that we need to rethink Foucault’s work on power because of one significant failing. His work comes up short, Agamben claims, because Foucault does not consider the ways in which modern power exposes life to death, for as Foucault contends, “death is outside the power relationship...[and] beyond the reach of power” (2003c, 247-8). Because this critique is fundamentally connected to the subject of my analysis, I would like to examine it in more detail. To do so, however, requires that we return to an examination of the old power of death, which, according to Agamben, is not necessarily old at all. On the contrary, Agamben argues that even though sovereign power has changed significantly since pre-modern times, sovereign power has never been fully displaced. In other words, while Foucault sees modern power as distancing itself from the power to take life, Agamben claims that power in modernity is still based on sovereign power, marking perhaps the greatest difference between his and Foucault’s work.

For Giorgio Agamben the mechanisms of sovereignty have not been superseded by bio-power, instead, sovereign authority remains intimately enmeshed within biopolitical mechanisms. In fact for Agamben, this is nothing new, for he argues that power—even in pre-modern times—has always contained both the elements of sovereign

power and bio-power. According to Agamben, “it can even be said that the production of a bio-political body is the original activity of sovereign power” (1995, 6). Thus the reformulations of power that Foucault described are, in Agamben’s eyes, not fundamental paradigm shifts, but changes in the emphasis or in the application of power. Moreover, while Foucault believed that both sovereign and bio-political power are exercised unevenly over life and death—sovereign power being the power to make die or to let live and bio-power being the power to foster life or to disallow it to the point of death—Agamben argues that because bio-power and sovereign power are intertwined, power has always been both simultaneously.

For Agamben it is not possible to understand the mechanisms of power at work in the contemporary modern state over the last two centuries unless one understands “that what lies at its basis is not man as a free conscious political subject but, above all, man’s bare life” (1995, 128). Democracy began as a challenge to the powers of the sovereign; however, ironically, it would not put an end to sovereign power but instead offered a “new and more dreadful foundation” for sovereign power (Agamben 1995, 121). The writers of the American Declaration of Independence (1776) stated that “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness.” This text links together rights with the body (life) and its needs (liberty and the pursuit of happiness). This formulation of right centers not on what the Greeks distinguished as *bios*, “the qualified life of the citizen, but *zoē*—the bare, anonymous life,” what is ignored in this declaration is that it is bare life where sovereign power exercises its authority in this formulation because it is at the moment of birth that one becomes a citizen (Agamben 1995, 124).

The concept of bare life, life exposed to death, is central to Agamben’s analysis of power, and can best be understood in relation to “an obscure figure of archaic Roman law, in which human life is included in the juridical order [*ordinamento*] solely in the form of its exclusion (that is, of its capacity to be killed),” this figure is that of the sacred man (1995, 8). To be defined as the sacred man was an act of punishment, Roman law defines the sacred man [*homo sacer*] as someone who may be killed and yet not sacrificed. According to Agamben, anyone can kill the sacred man without being

punished for it, thus to be a sacred man is to be placed outside the protection of the law. At the same time, however, the sacred man cannot be sacrificed in a religious ceremony, thus the sacred man is excluded from the religious domain as well. We are used to thinking of the idea of life as being sacred as meaning that life is to be preserved at all costs. However, what Agamben suggests is that when life was defined as sacred under Ancient Roman law, it was actually leaving one's life totally exposed to death. Thus for Agamben, the decision to define someone as the sacred man is an act of power and a fundamentally political decision. In particular, "the inclusion of bare life in the political realm constitutes the original—if concealed—nucleus of sovereign power" (Agamben 1995, 6). Thus, according to Agamben, it is an act of sovereign power that places the sacred man outside of the law.

To be excluded from the political order in this way is an act of "banning," what Agamben sees as being first marked by sovereign power and then excluded by it. This exclusion, for Agamben, creates bare life, for though through the act of being excluded the sacred man is included within the space of power, he is also, at the same time, excluded from all protection. This "inclusion-exclusion," Agamben claims, is included in modern mechanisms of power. Every society, he argues, necessarily draws a distinction between citizens and sacred men. According to Agamben, "it is as if every valorization and every 'politicization' of life...necessarily implies a new decision concerning the threshold beyond which life ceases to be politically relevant," the threshold beyond which life "becomes only 'sacred life,' and as such can be eliminated without punishment" (Agamben 1995, 139). If there is no clear figure of the sacred man in modern law it is because today, Agamben will argue, we all share the fate of the sacred man for we are all left exposed to death by power—a situation that he calls the "thanatopolitics" of modernity (1995, 115).

In exploring this exposure to death in modern culture, Benjamin Noys has examined features of our modern society that enforce Agamben's claims. Modernity, he points out, has an ambiguous relationship towards death. In modernity death is visible and invisible, meaningful and meaningless, both horrific and banal. While in the West the rate at which we are dying has declined, we are increasingly shown images of death through the media. While science may have reduced the risk in Western states of

untimely death due to disease and famine, any of us could still die at anytime from a nuclear attack or an ecological disaster. Moreover, all of us are exposed to death as we complete everyday tasks like driving a car. In 2000 more than 116,000 people died in car crashes in the 26 OECD countries, an average of 320 deaths a day (Noys 2005, 4). While it is certainly true that in modern culture death has become invisible in certain ways, we have to account for the new ways in which it has also been made more visible. We no longer attend public hangings or autopsies as entertainment, however, television has brought the staged autopsy into every possible living room.

“After the Holocaust and during a century of genocides and mass exterminations, from Cambodia to Rwanda,” Noys argues that “it is difficult to claim that death is now ‘invisible’ or ‘forbidden.’ Instead our exposure to death takes on the form of being exposed to the possibility of death organized politically, through bureaucratic planning and governmental intervention” (2005, 4-5). These new forms of death rely precisely on the bio-political mechanisms that Foucault claim promote life—planning, statistical calculation, population control. Thus for Agamben, while politics is, more and more a politics of the body and life (bio-politics), we must also consider the fact that in every modern state there is a line “marking the point at which the decision on life becomes a decision on death, and bio-politics can turn into thanatopolitics” (Agamben 1995, 122).

For Agamben, Foucault’s major weakness is that he fails to see how power might still be a power to “make die.” Foucault sees death as the limit of power because, for Foucault, power must always invest itself in the body. However, according to Agamben, Foucault’s articulation of power never takes into account the fact that power can also abandon bodies. The act of abandonment is a slippery concept for Agamben. In abandoning bare life, Agamben argues, sovereign power is at the same time including that which it abandons within the space of power. However, sovereign power also exposes the body to death so that, as Noys summarizes Agamben’s argument, “death is not power’s limit but the terrain on which it operates” (2005, 35). Thus when Foucault places death outside of the power relationship he leaves us with the difficulty of accounting for our exposure to death in modern culture and the ways in which this exposure may (still be/have always been) bound to the exercise of sovereign power itself.

Sovereign power is traditionally defined as the power to suspend the standard legal and political order (Agamben 1995, 11). This power to define the state of exception, Agamben argues, is no longer associated with the will of a particular sovereign. Instead, “in modern bio-politics,” Agamben claims, “sovereign is he who decides on the value or the nonvalue of life as such” (1995, 142). However, for Agamben, the problem in modern societies is that the line between those with and without a politically viable life has become “indistinct.” We are all “bare life,” thus bio-politics in contemporary society has become thanatopolitics. For Agamben, this diffusion of bare life throughout society has been caused by the fragmentation of sovereign power that Foucault mistakes for its displacement. According to Agamben, this line marking the point at which a decision on life becomes a decision on death is “now in motion and gradually moving into areas other than that of political life, areas in which the sovereign is entering into an ever more intimate symbiosis not only with the jurist but also with the doctor, the scientist, the expert, and the priest” (1995, 122).

Chapter Two

The Zone of Indistinction

On April 15, 1975, 21-year-old Karen Ann Quinlan fell into a coma from which she never recovered. Almost a year later, The New Jersey Supreme Court decided that Karen Ann could be removed from the respirator on which she had been placed—as the machine, they ruled, constituted extraordinary means of treatment in her condition. This landmark court case represents one of the first legal battles concerning an individual’s so called “right to die.” Though the court’s opinion is very narrow in this regard, the decision in Karen’s case has a wide range of implications for present concerns about death and dying; such as the moral, legal, and medical, “relevance of the distinction between so-called ordinary and extraordinary means of treatment, the role of parents or guardians in medical end-of-life decisions, the validity or otherwise of a now incompetent patient’s previously expressed wishes regarding life-sustaining treatment and so on” (Kuhse & Singer 9). Thus ultimately, like Damiens, it was not Karen Ann’s life that has made her known to the world; it was the *decision* to end her life.

Karen’s unfortunate condition apparently resulted from the ingestion of barbiturates, Valium, and alcohol at a birthday party. After becoming noticeably woozy, Karen Ann was taken home from the bar where the party was being held, and put to bed by her friends. Approximately fifteen minutes later her roommate discovered that she was not breathing and called 9-1-1. A policeman temporarily resuscitated Karen and she was taken by ambulance to Newton Memorial Hospital where she was placed on a respirator to assist her breathing. At the time of her arrival she had a temperature of 100 degrees, her pupils were unreactive, and she was unresponsive even to deep pain. After nine weeks with no change in her condition, Karen Ann was transferred to St. Claire’s Hospital where she could be made more comfortable (Jonsen 254).

During the course of the next five months Karen Ann’s physical condition deteriorated. “Unlike the ‘sleeping beauty’ depicted in newspaper articles and sketches

drawn by artists who had never even glimpsed the girl, Karen Ann was not resting quietly. As time went on, her body began to take on distinctive patterns. She would thrash wildly at times, she would blindly resist treatments and the machines she was attached to, yet all the while unable to communicate and respond to the voices of her loved ones” (Manieri). Her prognosis was grave; she was irreversibly comatose, the doctors concluded, with evidence of decortication, “a condition relating to the derangement of the cortex of the brain causing a physical posture in which the upper extremities are flexed and the lower extremities are extended” (Hughes 7). Karen Ann's body was being pulled inward in a kind of “fetal” position, she developed unpreventable bedsores, and had suffered a weight loss of at least 40 pounds (Hughes 7). All in all, despite the fact that she was unaware of her surroundings, Karen Ann was physically suffering.

On July 31, Karen’s family met with her doctors and the officials at St. Clare’s to discuss their daughter’s condition. The Quinlans expressed their wish that Karen be disconnected from the respirator. However, despite their initial sympathy toward the Quinlans’ request, her doctors ultimately refused to remove the machine. “It seemed to be the consensus not only of the treating physicians but also of the several qualified experts who [eventually] testified in the case, that removal from the respirator would not conform to medical practices, standards and traditions” (Hughes 9). Thus began the Quinlans’ lengthy legal battle in the New Jersey Court System to fulfill, what they claim, would have been their daughter’s wishes.

While Karen’s family lost the first round of the case in Superior Court, the state Supreme Court ruled that Joseph Quinlan (her father) be appointed as Karen Ann’s guardian and that whatever decision he made regarding her care “should be accepted by society, the overwhelming majority of whose numbers would,” the judges thought, “in similar circumstances exercise such a choice in the same way for themselves or for those closest to them” (Hughes 25). Though a considerable tragedy for everyone involved, Karen’s case helped to stimulate public debate on end of life issues that had once been considered morbid or objectionable. Karen Ann, being only 21 years old when she slipped into her coma, did not have a living will—the absence of which being the primary obstacle in removing her respirator. Within months of the New Jersey decision, states

began to draft statutes in order to protect patients, like Karen, who may be being kept alive simply because they had not signed a piece of paper. “The image of Karen Quinlan haunts our dreams,” explained one California lawmaker. “For many, the ultimate horror is not death, but the possibility of being maintained in limbo in a sterile room, by machines that are controlled by strangers” (Kuhse & Singer 264).

After the court decision, Karen Ann was eventually weaned from the machine that had pumped air into her lungs for over a year. The process took five days, but after all artificial means of breathing had been removed, Karen unexpectedly began to breathe on her own. She was to continue in this state of existence for another nine years before dying of pneumonia on June 11, 1985. “I don’t think you can ever prepare yourself one hundred percent for the death of your child,” Julia Quinlan remarked after her daughter was finally put to rest. “For ten years Karen lived in a state of limbo. My family and I lived in a state of limbo. I grieved for Karen for ten years and then I had to grieve all over again” (Manieri).

A New Time of Death

Karen’s case is emblematic of what Agamben calls the “zone of indistinction.” The words “life” and “death,” particularly in this case, have lost their meaning and thus Karen’s body existed from 1976 to 1985 on an “uncertain and nameless terrain,” one that, Agamben points out, was both biological and political (1995, 187). This ambiguous state, he claims, has become a feature of our modern culture because the dividing line between life and death has become particularly unstable. We no longer experience death as a punctual event or as the culmination of our lives because, as Noys elaborates, “it is no longer the event that will end and, *at the same time*, give sense to our lives” (2002, 51). For Mailer, this new experience of death in modernity is bound to our exposure, even in Western societies, to the threat of mass anonymous annihilation. We now live since the Holocaust and Hiroshima, he claimed, with the “suppressed knowledge” that our death will be “unknown, unhonoured, and unremarked” (qtd. in Noys 2005, 13). Though the thought that our individual death will be meaningless is certainly unsettling, according to Noys Mailer’s main concern was that the major effect of such atrocities was to “dislocate our sense of having a proper time of death” itself (2002, 13). Like Mailer, Agamben argues that there is something particular about death in modernity, and for

Agamben too this centers on our sense of time of death. What Agamben is claiming, however, is that we experience death differently in modernity because the precise time of our death has become increasingly ambiguous, and it is our culture and our politics that have thrown the time of our death into doubt.

For Mailer, the inevitability of this new time of death is never questioned. He encourages us to face this new time of death head on in order to overcome our “intolerable anxiety” toward our exposure to death in modern culture. He wants us to embrace it, as if somehow living our lives aware of the constant threat of death will ultimately be liberating. Mailer’s failure, according to Noys, is that he fails to question this inevitability. Agamben, on the other hand, proposes that it is necessary “to embark on a genealogical inquiry into the term ‘life’” in order to deal with the anxiety brought about by living in a “zone of indistinction” with regards to death (1999, 239). This inquiry, developed in most detail in the book *Homo Sacer*, does not try to produce an existential subject who can master the crisis, nor does he attempt to locate any authentic experience of death as a point of salvation. Instead, his inquiry depicts a “brief series of lives” that “may seem extreme, if not arbitrary” but which personify the zone of indistinction into which our culture as a whole has fallen (1995, 186).

One of these “lives” is that of the patient, like Karen Ann Quinlan, who’s “life” is maintained in an irreversible coma as a consequence of life support technologies. One of the most basic of such technologies, the respirator (ventilator), was developed during the polio epidemic of the 1950s. A Danish doctor, observing children with polio dying because they could not breathe on their own, developed a means to manually pump air into patient’s lungs with an air bag (Singer 1994, 22). Soon, this device was attached to a mechanical pump, and thus the respirator was born. This device was quickly incorporated into standard medical practice and saved the lives of many people including accident victims, people who had overdosed on drugs, and diabetics who had fallen into a coma. Many of these patients regained consciousness and returned to normal health, whereas in the years prior to the invention of the respirator, these patients would have most certainly died. “For other patients, however, the respirator brought a much more dubious benefit: they remained alive, their hearts continued to beat, but they were unconscious, and looked as if they would stay that way” (Singer 1994, 23). Thus,

advances in medicine had brought about an undeniable paradox. Once it became clear that a person could stay in that state almost indefinitely, the problem became should they have to?

Prior to 1959, comas were classified by the medical establishment into three distinct categories of a patient's consciousness. "New life support technology: artificial respiration, maintenance of cardiac circulation through intravenous perfusion of adrenaline, technologies of body temperature control, and so on" necessitated the establishment of a new diagnosis of coma because patients were being kept alive with less and less of a degree of consciousness (Agamben 1995, 160). This new and extreme form of coma was identified by two French neurophysiologists, P. Mollaret and M. Goulon. Unlike previous coma victims, the *coma dépassé* or "overcomatose patient" exists in a coma "in which the total abolition of relational life functions corresponds to an equally total abolition of vegetative life functions" (Mollaret & Goulon quoted in Agamben 1995, 160). Thus the "overcomatose patient" paradoxically occupies a zone of life beyond the cessation of their vitals. This new form of coma patient is, according to Agamben, "life" *in extremis*, where life "is no longer life, but rather death in motion" (1995, 186).

A patient like Karen Ann Quinlan thus poses a challenge to the traditional definition of death, which until then had been based on the cardio-respiratory model: the stopping of the heartbeat and the cessation of breathing. Little had changed in these criteria for thousands of years, however, "overcoma" had ultimately rendered them obsolete. By these traditional criteria the overcomatose patient is still technically alive, but yet seems to waver between life and death in what Agamben sees as an uncanny figure of our potential fate as modern subjects. Karen Ann was, in his terms, reduced almost totally to bare life.

This, however, is not the only reason why the overcomatose patient forced the medical establishment, in Agamben's eyes, to find a new definition of death. Inadvertently, the rise of life support technology has been accompanied by the simultaneous rise of successful transplant procedures. As the respirator was being perfected in the 1950's, so too were techniques for harvesting corneas from cadavers, a procedure that quickly became routine for patients suffering from cataracts. While organ

transplantation would not become routine until the 1980's, when rejection rates were lowered through the development of effective immunosuppressant drugs, throughout the 1950's and 60's doctors began to experiment more frequently with this limits of this new "miracle" procedure (Singer 1994, 23).

The first major organ transplantation to be attempted was the kidney in 1951. However, the first successful transplantation of this organ did not occur until 1954 and was performed using the kidney of a live donor instead of a cadaver. The transplantation of cadaveric kidneys, lungs, and livers began in the early sixties, through even in what was considered to be "successful" transplants the recipients usually lived for less than a year after their surgery (Singer 1994, 23). In 1964 the first heart transplant was attempted, though it would not be performed successfully until 1967, and patients were still not expected to live long after the surgery was completed. Even as transplant technology improved, many transplants still failed—or were not attempted—because suitable donors could not be found. Harvesting organs from cadavers was unreliable, for as soon as a donor's heart stopped beating, even healthy organs could become potentially damaged and untransplantable.

Thus, in the late 1960's, the medical establishment was confronted with two equally pressing problems, the need for new sources of transplantable organs, and the need to deal with a large number of patients who would never regain consciousness but were being kept alive on respirators (Singer 1994, 23). In 1968 a committee was established by the Harvard Medical School to address the consequences of such advancing medical technologies. This committee consisted of ten members of the medical profession, a lawyer, a historian, and a theologian. Its purpose; to "define irreversible coma as a new criterion for death" because (the Committee's report stated bluntly) A. the burden life-support technology places on the "patients who suffer permanent loss of intellect, on their families, on the hospitals, and on those in need of hospital beds already occupied by these comatose patients" and B. the need for transplantable organs (in Singer 1994, 25).

In their report, the Committee defined "irreversible coma" under three basic criteria: 1. unreceptivity and unresponsivity; 2. no movements or breathing; and 3. no reflexes. A fourth criterion was also recommended, a flat electroencephalogram, which

was to be used for confirmation when available (but in its absence it was thought that the first three criteria would suffice). Death could thus no longer be defined as the stopping of the heartbeat or the cessation of breathing, but must be defined as the death of the entirety of brain function. As soon as these criteria for this new concept of “total brain death” were developed, the United States’ medical establishment adopted this new definition of death—and was quickly followed by the rest of the Western world.

The listing of the second criterion—the absence of breathing—made it clear that the Committee did not mean to include within its definition of “irreversibly comatose” *all* patients who were permanently unconscious, but only those that were unable to breathe without medical assistance. Of course, it was precisely the use of life-support machines that made it difficult to determine whether that second criterion was indeed present, so the Committee recommended removing the ventilator for three minutes to determine if there was any spontaneous attempt to breathe on the part of the patient. If not, and the other two criteria were met (as well as the flat electroencephalogram when available), the patient was to be placed back on the ventilator and the tests repeated at least twenty-four hours later. After the twenty-four hour lapse, if all the criteria were still met, the patient could then be declared dead and removed from life-support. However, if the patient was listed as an organ donor, the ventilator would be restored *after* the declaration death in order to preserve the organs until they could be removed, rendering the deceased what Agamben has termed a “neomort,” a “*faux vivant*,” a “beating-heart cadaver,” or the extreme embodiment of bare life—a life that can be killed without the commission of a homicide (1995, 164-165).

Compared to the traditional cardio-respiratory criteria of death, Agamben claims that these new elaborate death and organ harvesting procedures have made death appear more of a bureaucratic process or a political decision than a punctual, biological event. However, what was remarkable at the time of this change, despite its significance, was that few protested this new definition of death. Peter Singer, a noted bioethical philosopher, called the change “a revolution without opposition” (1994, 28). Even the Pope endorsed the view that defining death was by in large the *decision* of doctors. Pope Pius XII remarked that even though it was the church’s position that the time of death is defined by the soul’s complete separation from the body, he concluded that “it remains

for the doctor, and especially the anesthesiologist, to give a clear and precise definition of ‘death’ and the ‘moment of death’ of a patient who passes away in a state of unconsciousness” (in Singer 1994, 29).

This meant that hundreds, perhaps thousands of individuals who had previously been considered alive were now the “living dead,” occupying a curious place between being declared dead and actually being dead. The problem is that this new definition of death ultimately fails to resolve the problematic state of the overcomatose patient “living” in a state between life and death, and actually exaggerates the indistinction into which the time of death has entered (Agamben 1995, 164). Instead of clarifying when death can be said to have occurred, the concept of brain stem death fundamentally contradicts itself. If we examine the concept of brain death more closely, then we find that brain death is defined as death because if life support is withdrawn *then death will result*. “What this means is that if life support is withdrawn then the heartbeat will stop or breathing will cease, and so brain death is death because it leads to death (as it was previously defined)” (Noys 2002, 53).

According to Agamben, the traditional definition of death is “smuggled” back into the supposedly new concept. “According to a clear logical inconsistency,” he claims, “heart failure—which was just rejected as a valid criterion of death—reappears to prove the exactness of the criterion that is to substitute for it” (1995, 163). Moreover, as Agamben finds particularly fascinating, this new criterion of brain death is justified by the fact that the brain is the only organ that cannot be transplanted. Thus the logic of this argument implies that once brain transplantation becomes possible, brain death would cease to be death. As Agamben puts it, “death, in this way, becomes an epiphenomenon of transplant technology” and nothing more precise (1995, 163). It, in effect, extends the “wavering” state of the overcomatose patient as a norm by defining death itself by indeterminant criteria.

Peter Singer has also commented on the indeterminacy of this new definition of death by exposing our failure to fully accept it. The Harvard Brain Death Committee itself, he points out could not quite swallow the implications of what they were recommending. As we have seen, the Committee described patients whose brains have ceased to function as being in an “irreversible coma,” and as burdens to themselves.

Dead people, however, are not in comas—they are simply dead, and if they are dead, Singer points out, nothing should be described as being a burden to them (1994, 33). Singer suggests that perhaps these lapses in the thinking of the Harvard Committee itself can be pardoned because they were still adjusting to this new concept death that they had defined. However, as Singer points out, doctors and nurses almost forty years later should have no such excuses. In his book *Rethinking Life and Death*, Singer examines several studies in which the evidence suggests that people in the medical profession still do not think of the brain-dead as dead. Medical professionals were found to use phrases like:

- “There’s nothing more that we can do—we’re just keeping him alive so you can consider organ donation.”
- “The machine is the way he would have to live the rest of his life.”
- “The machine is basically what is keeping her alive.”
- “At this point in time it doesn’t look like the patient is going to survive” (Singer 1994, 33-34).

Singer suggests two reasons for this persistent inability to think of the brain-dead as dead, either we remain attached to obsolete definitions of death, or the patients are themselves still alive (1994, 35). It is not my intention at this point to engage the medical community on the practicality of their definition, for this new definition of death has certainly accomplished the two goals that the Harvard Committee set forth. However, according to Agamben, it is impossible “to avoid the impression that the entire discussion [of time of death] is wrapped up in inextricable logical contradictions, and that the concept of ‘death,’ far from having become more exact, now oscillates from one pole to the other with the greatest indeterminacy” (1995, 162). If we examine the situation in Agamben’s terms, we can see that our failure to fully accept the new definition of death is not simply a matter of adjustment, it is because the new definition of death is itself viciously circular. Our inability to adjust to it is merely a reflection of the conceptual ambiguity encoded within the concept of brain death itself.

Masks of Power

For Agamben, however, the question of “when is dead?” is not the only question at stake in the zone of indistinction that he identifies around death. We must also ask

ourselves, who decides? As we see in the death of Karen Ann Quinlan, it was a legal authority that made the decision to remove her respirator, however, when Karen did not die after she was essentially declared dead, the decision on her death moved back into the medical realm. Agamben also describes a 1974 court case in which a defense lawyer argued that his client was not guilty of murder because the victim had not died from a gunshot wound, but instead, had died from the removal of his vital organs by a transplant doctor (1995, 163). Though unsuccessful, this defense was ingenious in Agamben's mind for it not only brings to light the ambiguity surrounding when death occurs, but it throws into doubt the sector of authority most responsible for deciding on the time of death.

If the time of death has entered a "zone of indistinction" then, Agamben concludes, so also has the power to decide on when death actually occurs. As Agamben sees it, at one time the power to decide on life and death was reserved solely for the sovereign, but now, that sovereign function has become dispersed in society and now resides in multiple figures. In modernity, he reasons, "sovereign is he who decides on the value or nonvalue of life as such" a decision that today is no longer the task of one individual—if it ever was (Agamben 1995, 142). In the case of the overcomatose patient that decision has seemingly become medicalized and legalized as it rests in the hands of both doctors and lawyers. It has fallen to these figures, Agamben claims to define the life that may be killed without the commission of a homicide—in other words to define bare life.

Both Agamben and Foucault bring up the example of *Generalísimo* Francisco Franco, the Spanish head of state from 1939-1975. After governing for thirty-six years, Franco suffered a number of heart attacks and subsequent medical complications from Parkinson's disease that rendered him unconscious for long periods of time and unable to breathe on his own. "Thereafter, he was kept alive by a massive panoply of life-support machines, regaining consciousness only occasionally to murmur 'how hard it is to die'" (P. Preston qtd. in Noys 2005, 53). In the name of survival, even when that survival was at the cost of terrible suffering, Franco's doctors kept him alive—effectively forcing him into the position of bare life.

Franco represents the quintessential sovereign for both Agamben and Foucault because, in life, Franco “exercised the right of life and death with great savagery, was the bloodiest of all the dictators, [and] wielded an absolute right of life and death for forty years” (2003c, 248). However, as Agamben contends, by the time of Franco’s death, sovereignty could no longer be said to operate through the body of one man. Instead, the power of the sovereign decision had become dispersed throughout society. This sovereign decision on life and death, he claims, is now made “invisible” and hidden “behind the dull-witted masks of the powerful” (Agamben 2000, 8).

Although the sovereign, as head of state, is no longer dominant in Agamben’s mind, death is still a political decision because what ultimately stands behind the legal and medical decision on death is the “old power of death” associated with sovereign power. Thus we cannot say that this old power of death has disappeared, according to Agamben it has simply taken on “new masks” in modern culture (1995, 122). To strip away these masks is not to indulge in nostalgia for the time where sovereign power did not disguise its brutality. Instead, it is to expose the thorough politicization of death, something that I will discuss further in Chapter Three, that persists despite the power of death no longer appearing as “strictly” political. Thus for Agamben, the theatre of power is no longer the scene of execution where, as Foucault described, the body of the sovereign confronts the body of the accused in a staging of death. If modern power has entered the zone of indistinction then the theatre of power has become spread across our culture, including, and most obviously into medicine.

In his lecture course in 1976 Michel Foucault gave a slightly different reading of Franco’s death. Instead of seeing it as a dispersion of sovereign power from one man to many sectors of authority, Foucault regarded it as an example of the modern shift away from sovereign power towards bio-power. For though Franco had wielded his sovereign power absolutely, according to Foucault, “at the moment when he himself was dying, he entered this new sort of field of power over life which consists not only of managing life, but in keeping individuals alive after they are dead” (2003c, 248). The sovereign’s power to inflict bloody death, he claimed, had thus passed over into a bio-political management of life that no longer has any real awareness of death at all, and where even the traditional sovereign is subject to a bio-politics taken up by new figures—doctors, lawyers, priests,

and advocates. Thus for Foucault, this bio-politics tries so hard to preserve life, even at the cost of terrible suffering, because death is the limit to its power.

Foucault, Death, and Power

While Agamben and Foucault seem to fundamentally disagree on this point, Agamben's position is actually a lot closer to Foucault's early work on power. In particular, it bears resemblance to a little acknowledged book written by Foucault in 1973 entitled *The Birth of the Clinic*. In this book Foucault makes an argument about the importance of death to our modern sensibilities. In fact, he argues that "from the integration of death into medical thought is born a medicine that is given us a science of the individual" (1973, 197). Though, as I have acknowledged, in his later work Foucault claimed that a power that manages life cannot account for the death of individuals, in this particular work, he claimed that death is "*embodied*" in an individual's living body (1973, 196). According to Foucault, medicine established itself as the first science of individuals once it was able to incorporate death into its analysis of bodies. Thus, Foucault claims in *The Birth of the Clinic* that "the experience of individuality in modern culture is bound up with that of death" (1973, 197). This work of Foucault's is unfortunately ignored by Agamben, an oversight that does not come as much of a surprise since it is ultimately ignored by Foucault as well in his later work on bio-politics.

Perhaps Foucault's later concentration on power as the power to manage life forces him to ignore or downplay the role he had earlier seen death playing in medical discourse—despite the fact that the medicine's inclusion of pathological anatomy supposedly occurred along side of the rise of bio-power. Or it may simply be that death occupied a far more ambiguous place in Foucault's thinking than a reading of his later work might suggest. For one thing, though Michel Foucault is considered by many to be the authority on all things related to power, Foucault himself was never entirely satisfied with the theories of power that he put forth. As such, his own understanding of power was under constant construction throughout the course of his life.

Moreover, when it comes to the concept of bio-power, Foucault's work is ultimately incomplete. Though in the last years of his life Foucault alluded to the coming of a more sustained engagement with this new technology of power, he would not live to fulfill this promise. Foucault passed away in the summer of 1984; at the time of his death

he had only finished three of the proposed six volumes in his *History of Sexuality* series. Though today we are fortunate enough that Foucault was able to elaborate some on this concept of bio-power in several interviews and lectures, he was ultimately unable to fully expand on the bio-political concepts that he proposed.

While it is impossible to know what could have been, it is difficult to imagine that—in a book focused specifically on bio-power—Foucault would not have readdressed some of his earlier concerns with medicine in light of his reformulation of power as bio-politics. This conclusion seems especially valid when one considers that nearly all of Foucault’s own examples of bio-political mechanisms, as described in both *The History of Sexuality Vol. I* and his subsequent publishings on the subject, focus on the medical discipline. Since it is impossible for myself to speculate on the links between the medical discipline and power that Foucault might have reformulated, I can only base my thoughts on those links that he exposed in his earlier work on medicine—thus I intend to analyze *The Birth of the Clinic* in some detail throughout the remainder of this chapter in order to both get a sense of these connections from a Foucaudian stand point and to supplement Agamben’s genealogical history of bare life which focuses on modern death since only the post World War II era.

Foucault’s Early Thoughts on Medicine: *The Birth of the Clinic*

In the first line of the preface to *The Birth of the Clinic* Foucault described medicine as being “about space, about language, and about death; it is about the act of seeing, the gaze” (1973a: ix). This concept of “the gaze” is particularly important for Foucault’s understanding of power because it represents medical perception as a form of sovereign power. While one usually equates the term gaze with sight, Foucault wished to lend this term to a more complete perceptual experience. The concept of the medical “gaze” is meant to equally embrace the senses of sight, touch, and sound. In modern medicine it is this gaze that tracks down the “inaccessible illness,” draws it to the surface, and projects it on the dispersed organs of the corpse (Foucault 1973, 164). This modern “gaze” is not, for Foucault, a natural practice, but a learned one. Meaning that the way in which we learn to see the body—and the specific effects of disease on that body—has changed dramatically throughout medical history.

According to Brian S. Turner, this epistemological perspective stands in stark contrast to the way in which the empirical sciences, like medicine, view the knowledge that they present to the world. Empiricists believe that the things that we perceive exist in an objective reality of their own, and that through science, an individual can objectively observe them. For Foucault, the way in which we perceive our world is inextricably bound to language, “we know or see what our language permits,” he argues, “because we can never naively apprehend or know a ‘reality’ outside of language” itself (Turner 10). Even something as seemingly “natural” as disease cannot be thought of “outside of the language with which [it is] described” (Turner 11). Thus when Foucault sought to analyze the physician’s perception of disease, he focused primarily on the language physicians have used in medical discourse (1973, 125).

Foucault found that the medicine of the eighteenth-century was overwhelmingly concerned with specifying and classifying disease—what was termed nosography at the time. This medical tradition was premised on the fact that disease existed in a pure form outside of the body. Thus, for the nosographer, the individual body in which the disease was located was a persistent obstacle. The essence of the disease, it was thought, never presented itself to the senses, it was therefore the task of the physician to decipher what a disease’s particular essence was—based on the presented symptoms—in order to make a correct classification.

Clearly, there is a radical difference between nosography and modern diagnostic medicine, however, Foucault disputes medicine’s version of the historical events that brought about such change. Medicine’s own narrative suggests that the previous method of classification disappeared at the moment when the physician, having been enlightened by scientific rationality, was finally able to cast off old myths and become an objective observer of both the body and disease. Foucault, on the other hand, asserts that this shift was merely a change in the way physicians could perceive and express disease and not a move toward objectivity. Far from being an act of “psychological and epistemological purification;” the shift, he contended, “was nothing more than a syntactical reorganization of disease” brought about specifically by the integration of death into medicine. Thus for Foucault, like Agamben, death is less about a biological or scientific reality, and more about a political decision.

In the old classificatory model, death was absolutely beyond medicine. While this model organized disease by families, genera, and species, it was not at all concerned with the causes of disease nor with the localization of disease within the body itself. This approach to medicine, Foucault maintained, simply “did not call into question this ambiguous concept of death,” death was merely “that absolute beyond which there was neither life nor disease (1973, 141). However, for Foucault, it was through the incorporation of death into medicine that the individual first assumed the role as an object of positive knowledge and could thus be located in the nexus of knowledge and power that Foucault has identified in other works (1973, 196).

While it is ultimately pathological anatomy that supplies a new medical discourse capable of integrating death and medicine, this incorporation did not happen over night. Despite the presence of anatomists in the eighteenth-century, anatomy and dissection, Foucault pointed out, were not immediately tied to diagnostic medicine. Physicians of the time, it seems, simply did not understand how lesions on a corpse could help to identify disease in a live patient because of their belief that disease did not exist beyond the point of death. Thus while Bichat was not the first to advocate that dissections and anatomy should play a role in clinical medicine, Foucault identifies his writings as exemplifying “the great break in the history of Western medicine” because of his focus on disease in the body of the corpse (1973, 146).

Ultimately, for Foucault, it is through the realization that “the knowledge of the living, ambiguous disease could be aligned upon the white visibility of the dead” that two previously separate types of knowledge—anatomy and medicine—had the opportunity to fully collaborate (Foucault 1973, 126). While earlier anatomists focused simply on providing an accurate depiction of the body and the body’s functions, it was Bichat who advocated the use of pathological anatomy in diagnostic medicine in order to know the progression of disease. It was the corpse, for Foucault, which expanded the physician’s vision, illuminating the precise nature of disease and rendering visible what was once concealed. It was through death that one could see the progression of disease and that death itself was a process with each organ experiencing its own death along the way. For the first time, Foucault contended, death became “a technical instrument that provided a grasp on the truth of life and the nature of illness” (1973, 144).

Moreover, Foucault makes the surprising claim that this new medical experience of death has helped to shape modern individuals. Through this new illumination Western man, he claimed, could now “constitute himself in his own eyes as an object of science, he grasped himself with language, and gave himself, in himself and by himself, a discursive existence, only in the opening created by his own elimination” (Foucault 1973, 197). Thus Foucault’s work in *The Birth of the Clinic* can ultimately be linked to Agamben’s project on death, for Foucault also articulates that it is our exposure to death through medicine that gives us a sense of ourselves as individuals. This exposure is, for Foucault as well, bound up with a fundamental decision on the time of death through medical discourse, a decision that is made in a space of power—the clinic for Foucault. As Foucault sees it, Bichat was able to invalidate the popular notion of the “punctual conception of death” by dispersing the time of death into various different *times* of death: of the heart, the lungs, the brain and other bodily systems. At each point this medical power to define death is really the sovereign power of the gaze, a power that penetrates into bodies and decides when we are dead.

Thus ultimately what we find in Foucault’s writing of the early nineteenth century clinic is a description of a series of medical decisions on the time of death that also gives us the concept of death as belonging to the individual and defining subjectivity. The capacity to make these decisions is the result of the availability of bare life within the clinic and the sovereign decision that defines that bare life, to use Agamben’s terms. The result is that in the space of the clinic the medical gaze becomes a sovereign power. Foucault’s work thus provides a better historical picture of medical power as sovereign power and helps us to complicate Agamben’s analysis by taking into account the earlier developments that Agamben’s work ignores. Thus Noys argues “it may be that the dispersion of sovereign power through a symbiosis between the sovereign and the doctor has a longer history than Agamben recognizes” (2005, 69).

Bio-power and “The Old Power of Death”

Thomas Tierney also attempts to account for the apparent contradiction between Foucault’s formulation of death in *The Birth of the Clinic* and his subsequent reflections on death with regards to bio-power. For on the one hand, Foucault claimed that the anatomist “revitalized the concept of death, bringing it down from that absolute in which

it appeared as an indivisible, decisive, irrecoverable event” (1973, 144). Thus transforming death, according to Foucault, into a tool for illuminating life itself. And on the other hand, Foucault also asserted that bio-power caused death—once the most visible aspect of sovereign authority—to become a private and shameful ordeal in modern society (2003c, 248). In a culture that promotes life, he claimed in *The History of Sexuality Vol. I*, death must be concealed.

Since Foucault’s early work can help shed light on the now pressing bio-ethical issues surrounding death and dying, Tierney takes great pains to sort out Foucault’s seemingly inconsistent claim that in modernity death simultaneously illuminates life while being concealed by technologies of power based upon the administration of life itself. For him, this inconsistency can be contended with by genealogically tracing the role of anatomy throughout the transition from sovereign to bio-power in order to show how these two seemingly contradictory forms of power are in fact closely bound together.

Tierney’s article “Anatomy and Governmentality,” discusses “the central role that death has played in the development of both modern medicine and the art of governing” by looking at anatomical practices. While Foucault himself asserts the importance of pathological anatomy and its founder Bichat, Tierney hopes to expand Foucault’s initial exploration of dissection to include more historical context. This analysis also helps to supplant Agamben’s historical work on our exposure to death in early modernity which is unfortunately sparse and underdeveloped. The crisis in the decision on the time of death that Agamben identifies with the new concept of brain death, I will argue, seems to already have a foundation with the integration of death and pathological anatomy into medical discourse, a possibility that Agamben does not address.

Bichat, according to Foucault in *The Birth of the Clinic*, promoted a new experience of death through his use of pathological anatomy as a tool for locating disease in the body. What Tierney points out is the role that dissection has had in society more generally. Dissections, in fact, used to be very public events. Spectacles, he claims, associated directly with the scaffold and the power of the sovereign. While these early dissections, like today, were performed as teaching tools, the setting of such dissections was much less private. In fact, dissections were open to the public and used as a popular form of entertainment but also, and more importantly, as a form of punishment.

At the time, dissection was thought to be a punishment worse than death because it precluded an intact burial. Criminals who had committed serious offenses were thus sentenced to be hung and then dissected. The link between the institutions of medicine and punishment was thus so strong during the pre-modern period that it was difficult to tell exactly where punishment ended and scientific inquiry began. In fact, prior to dissecting a corpse, the anatomist would even relay to the crowd exactly what had landed the individual on the anatomist's table, thus making the individual's crime very much a part of the larger spectacle of medical dissection (Tierney 28).

Medicine also thus becomes part of the "nexus of sovereignty." The reason that it does so is that the dissection of the criminal's body is not simply about obtaining medical knowledge; instead it is the final humiliation visited on the body of the condemned. Medicine is completing the punishment dictated by the sovereign, and the anatomist becomes the final representative of sovereign power. Unfortunately, Agamben ignores this history of the relationship between medicine and sovereignty constructed through acts of punishment and violence. This is not however to deny Agamben's assertion that the symbiosis of sovereign power and medical power has accelerated in the postwar period, but it is to say that this symbiosis has roots that Agamben's work does not cover.

During this time period executioners were often approached by competing anatomists who offered to pay large sums of money for the bodies of any individual condemned to death. Despite the fact that most criminals were not specifically sentenced to be dissected after their execution, the executioner, Tierney claims, who benefited financially from these transactions at the gallows, often auctioned any freshly hung corpse to the highest bidder. In *Discipline and Punish* Foucault mentions that the scaffold was often a very volatile place to be. "It was evident," he argues, "that the great spectacle of punishment ran the risk of being rejected by the very people to whom it was addressed...attempts were made to seize the condemned man, either to save him," to kill him themselves, or as Tierney claims, to save his corpse from the prospect of dissection (Foucault 1978, 63).

According to Peter Linebaugh in his article "The Tyburn Riots Against the Surgeons," death, in the pre-modern period, was quite a complex concept. It would seem that for many, the line between death and life was indistinct, to use Agamben's terms.

The dead were often thought to influence the living, thus making the prospect of dissecting a loved one almost unthinkable. Corpses at the time were given a sort of reverence, and hanged corpses were thought to possess certain healing powers (Linebaugh 115). Moreover, the predominant religious beliefs dictated that one should have a “proper Christian burial” in order to achieve salvation. Hanging, it was thought “removed a man by violence from this life. At least his soul should be allowed to enter the next in peace” (Linebaugh 115). In Linebaugh’s opinion, it was precisely these conceptions of death that clashed with the emerging “scientific” view of the anatomists “who mixed arguments of medical utility, traditional prerogative and penal retribution with attitudes of class hatred” for it was the underclass who so frequently ended up at the end of the noose (Linebaugh 115).

As one can imagine, the pre-modern anatomist was often closely associated with the hangman, thus the uprisings against the executioners at the gallows that Foucault described could also spell disaster for the anatomist who wished to buy a corpse for dissection. Often the public would refuse to allow the anatomists to take the body, and at times, the mob would even violently lash out at the anatomists themselves who were then blamed for the uprisings in the first place. According to Tierney,

the unruly nature of this market in executed bodies led the officially sanctioned anatomical institutions to press for political redress. Throughout the first half of the eighteenth century the College of Physicians and the Barber-Surgeons Company petitioned Parliament and the Secretary of State for assistance in the procurement of bodies from the gallows, and were successful in getting a sizeable military presence to ensure order during [some] executions (Tierney 35).

Unfortunately, having a military presence did not always guarantee the procurement of a corpse by the anatomists. After frequent riots at the infamous Tyburn gallows, the Barber-Surgeons Company complained that it was the troops themselves who had prevented the anatomists from collecting their spoils and allowed the crowd to take the body away for proper burial (Linebaugh 76).

It is around this time that Tierney sees the first links between medicine and bio-power. Jeremy Bentham, in 1826, drafted a bill to reform the method, dictated by the Murder Act, by which anatomists could legally obtain bodies. According to Tierney, the logic of Bentham’s bill provides a unique glimpse of the blending of “the mechanisms of

power from the model of sovereignty, with its emphasis on punishment” with a “governmental form of power that administered life” (41). In fact, Bentham’s bill was described by his contemporaries as “The Use of the Dead for the Living” because he focused, not on punishing those who obtained bodies illegally—an increasingly prevailing problem—but on the reason that accomplished doctors were forced to obtain those bodies illegally in the first place.

Bentham’s solution was to legalize the dissection of bodies of those who had died while receiving hospital charity in order to disassociate medicine and punishment and allow those who had received charity to give back to society through the contribution of their body to science. Bentham recognized the ways in which anatomical knowledge could better society, “and from that perspective it was obvious that the only effective solution to the problem [that plagued anatomists] was to provide an adequate alternative source of subjects” for dissection—a rationale that interestingly parallels the objectives of the Harvard Committee on Brain Death (Tierney 41).

Rethinking Power

Ultimately both Agamben and Foucault would agree that sovereign power in contemporary society no longer operates in what we would think of as the traditional sense—if in fact it ever did. For even Foucault did not believe that sovereign power has completely disappeared in modern society, for he, like Agamben, sees modernity as some amalgamation of both bio-power and sovereign authority. Like Agamben, I see sovereign power as being taken up by new figure in modernity, a fact that has caused death to become politicized. Thus, though I see bio-power as the central form of power in modernity, I would like to problematize Foucault’s argument that death is the limit of *all* power on the body, it is possible that death is the limit of bio-power, however, as he himself points out, the death of Franco symbolizes a “clash between two systems of power: that of sovereignty over death, and that of the regularization of life” (Foucault 2003c, 249). For me it is not too much of a stretch to see this “clash” as present in such similar deaths—like the death of Karen Ann Quinlan.

The point Agamben wants to make is that this situation, this “clash” this “zone of indistinction” has permeated all of modern culture, and as I will argue in Chapter Three, we now live in a time in which bio-power and sovereignty exist side by side and “clash”

more periodically than Foucault would have imagined. What Foucault seems to be saying in *The Birth of the Clinic* is that these clashes can be viewed only at the time of the specific paradigm shift between these two forms of power, and that today we rest squarely in a bio-political society. Foucault himself only saw the balanced combination of these two forms of power as possible in modernity under totalitarian regimes. What Agamben will stress, on the other hand, is that because of this “zone of indistinction” that we now live in, the line between totalitarian regimes and our democracy has also become increasingly “indistinct.” While I recognize the controversial and extreme nature of Agamben’s claim, I too argue that it is the combined forces of bio-power and sovereignty that really define modernity, thus I give Agamben’s argument further consideration in my final chapter.

Chapter Three

Ethics and the Politicization of Death

On April 15, 1989 Anthony Bland, along with almost 40,000 other soccer fans attended the FA Cup semi-final match between Liverpool and Nottingham Forest in Sheffield, England. Bland was an 18 year old avid Liverpool supporter who had traveled with his father that day to the game at Hillsborough stadium. Due to traffic delays and weather conditions many fans arrived at the stadium later than usual, and were thus overly anxious to get in through the gates to see the start of the game. In order to accommodate the late rush of fans, police officers opened up a gate originally intended as an exit. Like most European soccer stadiums at the time, the Hillsborough stadium had placed high steel fencing between the spectators and the field as a form of crowd control. Additionally, the standing-room only sections, for which Tony and his father had purchased tickets, were further sub-divided into sections called pens, and it was into two of these already overcrowded sections that this newly opened gate led.

The resulting influx of thousands of fans through the gate caused a huge crush at the front of the two pens as people were being pressed up against the fencing by the weight of the crowd behind them. The people entering, however, were unaware of what was being experienced at the front of the pen—police or stewards who would normally redirect fans if these central pens had reached capacity were not present on this occasion for reasons which have never been adequately explained. Unfortunately, the problems at the front of the pens went unnoticed by authorities, and for several minutes the match went on despite the fact that people were being crushed to death.

Even after the match was stopped six minutes in, there was still much confusion among those who might have been able to help. As those being crushed tried frantically to climb the fence, senior police assumed that they were witnessing a “standard” pitch invasion by hooligans and responded by sending in reinforcements to keep people off the field rather than helping the fans out of the crush. Ninety-four people died that day, with

seven hundred and sixty-six other fans receiving various injuries, marking the worst disaster in British sports history. The death toll reached ninety-five four days later when 14-year-old Lee Nichol died in a hospital from his injuries, and it became ninety-six in March of 1993 when Anthony Bland was eventually removed from life support.

Though Bland technically survived the initial disaster, he was never to regain consciousness after the accident. He suffered crushed ribs and two punctured lungs, causing an interruption in the supply of oxygen to his brain. As a result, he sustained catastrophic and irreversible damage to the higher centers of the brain, thus leaving him in a persistent vegetative state (PVS). His condition was described later by Lord Justice Hoffman:

He lies in Airedale General Hospital in Keighley, fed liquid food by a pump through a tube passing through his nose and down the back of his throat into his stomach. His bladder is emptied through a catheter inserted through his penis, which from time to time has caused infections requiring dressing and antibiotic treatment. His stiffened joints have caused his limbs to be rigidly contracted so that his arms are tightly flexed across his chest and his legs unnaturally contorted. Reflex movements in the throat cause him to vomit and dribble. Of all this, and the presence of members of his family who take turns to visit him, Anthony Bland has no consciousness at all. The parts of his brain that provided him with consciousness have turned to fluid. The darkness and oblivion which descended at Hillsborough will never depart. His body is alive, but he has no life in the sense that even the most pitifully handicapped but conscious human being has a life. But the advances of modern medicine permit him to be kept in this state for years, even perhaps for decades (in Singer 1994, 58).

Indeed, EEG and CT scans revealed that while Tony's brain stem remained intact (meaning that he was not brain-dead in the traditional sense), there was no cortical activity what so ever. Moreover, scans subsequently shown to the court revealed "far more space than substance" in the relevant parts of Anthony Bland's brain (Singer 1994, 59).

"Whatever the advances of modern medicine might permit," none of the relevant family members or doctors "could see any benefit to him, or to anyone else in keeping him alive for decades" (Singer 1994, 58-59). And while removing Tony's feeding tube—allowing him to die in a week or two—may have been common practice, Tony's doctor was advised by the Sheffield coroner that due to the public nature of the Hillsborough

disaster and the fact that criminal charges were still pending in the matter, that he should seek legal advice before removing the tube. Thus, Tony's doctor took the matter to the Family Division of the High Court who appointed Tony an advocate. Unfortunately, Tony was not to be put to rest for another four years because the advocate assigned to him by the Family Division opposed the removal of his feeding tube, arguing that it was akin to murder. The Bland family thus went to court to ensure that their son was allowed to "die with dignity." Even though the presiding judge of the Family Division did not accept the advocate's argument, Tony's advocate appealed, and the case was eventually decided by Britain's highest court in 1993 in favor of the Bland family.

Sanctity of Life Ethic

Altogether, nine different judges were involved in the Bland decision—the original judge from the Family Division of the High Court, three in the Court of Appeal, and five in the House of Lords (Singer 1994, 65). Ultimately, all concluded that removing Tony's feeding tube, thereby instigating his death, would be in Tony's own best interest. While for most, this may seem like common sense, Singer argues that the decision broke new ethical ground on two counts. First, the court considered Tony's "quality of life" in their decision on whether or not to sustain his life and second, the court ultimately made the decision to lawfully end the life of an innocent human being (Singer 1994, 67-68). Thus, Singer contends that this case effectively put an end to the "sanctity of life ethic"—at least in the British Courts—that has so dominated the debate on end of life issues. In a sense, this case broke new ground by not treating death as some sort of side-effect of withdrawing treatment, but instead, as something lawfully intended.

The law, being heavily influenced by standard Judeo-Christian ethics, has staunchly maintained the principle that "every human life is of equal value" (Singer 1994, 65). This ethic remained unchallenged in the case of Karen Ann Quinlan presented in the previous chapter. Instead, this case put forth a tenuous distinction between "ordinary" and "extraordinary" means of treatment as justification for ending Karen's life. Since it was ruled that in Karen's case a respirator was an extraordinary measure, it was removed. As Singer points out, however, this distinction is extremely fragile if not unsustainable (1994, 71). The obvious question is why is a piece of common medical

equipment “extraordinary?” Would it still be considered such if Karen had a hope of recovery? Would it still be considered such if Karen was conscious? In the face of these issues Singer’s suggestion is that, though the New Jersey Supreme Court was unable to admit it, what we have is a decision about Karen’s quality of life—just like in the Bland decision. In fact, the very description of the respirator as an “extraordinary means” of sustaining life depends on already having decided that it is not worthwhile sustaining the life of a patient in a state such as Karen’s in the first place.

In Singer’s words, the distinction between ordinary and extraordinary treatment is just a “fig leaf” positioned to hide the judgment that Karen’s life no longer holds any positive qualities. We need such pretenses in order to protect the sanctity of life ethic though ultimately it is our intention is that Karen Ann should die (Singer 1994, 73). The decision in the Bland case, however, discarded such crutches. “No doubt the British judges considering the case of Anthony Bland could have held that the course of treatment proposed was not intended to bring about the death of Anthony Bland. His death, they might have said, would be a foreseen but unwanted side-effect of removing the feeding tube, which constituted ‘extraordinary’ or ‘disproportionate’ medical treatment” (Singer 1994, 73). However, faced with the prospect of a life like that of Tony Bland, these nine judges made it clear that they did not value human life as merely biological existence. In fact, as one judge concluded, “there is no question of his life being worth living or not worth living because the stark reality is that Anthony Bland is not living a life at all” (Lord Justice Hoffman quoted in Singer 1994, 66). In a sense, however, the judges did not simply dismiss the traditional ethic of the sanctity of human life that had so informed legal precedent up to that time; they merely found it outweighed by the issue of Tony’s quality of life.

For Agamben, the decision made by these judges can be explained by the classical distinction between *zoē* and *bios*. The Ancient Greeks, Agamben reveals, did not have only one term to express what we mean by the word *life*. “They used two semantically and morphologically distinct terms: *zoē*, which expressed the simple fact of living in common to all living beings (animals, humans, or gods), and *bios*, which signified the form or manner of living peculiar to a single individual or group” (Agamben 2000b, 3). The modern English language has, over time, dropped this distinction, not only in our

language, but in the way that we commonly think about life itself. What Agamben argues, is that we have come to politicize bare life, or what the judges in the Bland case saw as mere biological existence, and thus death as well.

The Politicization of Death

On the one hand, the overcomatose or PVS patient is interesting to Agamben because he or she incarnates an almost pure form of “bare life;” in the case of Anthony Bland, as with Karen Quinlan, “life becomes (or at least seems to become) pure *zoē*” (Agamben 1995, 186). On the other hand, Agamben is interested in such patients because they are also subject to a sovereign decision on their time of death. This decision is not sovereign in the traditional sense (i.e. Damians’ execution), for as Agamben argues, sovereignty has become dispersed, such that the old power of death is taken up by new figures. It has, as I described in Chapter Two, entered into a zone of indistinction where this power over life and death can also become the domain of the doctor.

Although the sovereign, as head of state, is no longer dominant, this does not mean that death is no longer political. Rather, that this political power has become indistinct and dispersed. This indistinction, however, does not mean that death is becoming any *less* political either. Rather, as Agamben asserts, it means that death is becoming more and more politicized (1995, 165). This is because the political power over death is penetrating further and further into our bodies, as—due to the advent of better and better medical technologies—it can either sustain or end life in more and more extreme circumstances. And thus we are increasingly exposed to death in modern culture as medical technology allows survival to the point where to talk of “life” hardly seems to make sense any more (Agamben 1995, 164).

We resist the notion that life and death are political because we would like to tie them to a specific biological moment in the body. However, according to Agamben, “life and death are not properly scientific concepts but rather political concepts, which as such acquire a political meaning precisely only through a decision” (1995 164). Thus for Agamben, the biological moment that we are in search of does not in fact exist, life and death are always a matter of a sovereign decision that decides on life and death through defining bare life. Thus by exploring how the decision on the time of death is always a

decision on defining bare life, Agamben demonstrates that this decision is always political, before any medical, biological or cultural meaning becomes attached to it.

This is why the “medicalization of death” is better understood as a symptom of death being political. It is simply that the sovereign power to decide on death has passed from the traditional sovereign to the doctor or, in more complex cases like that of Anthony Bland and Karen Ann Quinlan, the power to make that sovereign decision becomes even more fragmented between the medical and legal realms. In each case, it is not that the sovereign power to decide on death has become weakened, instead, the authority to make the essential sovereign decision is spreading throughout society. Thus, as the two paradigmatic cases that I have explored demonstrate, more and more people now have a stake in defining bare life—doctors, lawyers, advocates, judges, bioethicists etc.

As I have described in Chapter Two, Agamben’s genealogy of life is actually an attempt to analyze the emergence of this new configuration in which “bare life” and sovereign power confront one another in a so called “zone of indistinction.” For Agamben, one of the most common spaces to confront this indistinction is the hospital room in which the figure of bare life can be isolated in the overcomatose patient (Agamben 1999, 232). The distinction between *zoē* and *bios*, that I have already detailed, is central to Agamben’s genealogy. By taking life as its object, power has politicized life itself. For Agamben, “the entry of *zoē* into the sphere of the *polis*—the politicization of bare life as such—constitutes the decisive event of modernity and signals a radical transformation of the political-philosophical categories of classical thought” (1995, 4). Thus it is in the figure of the overcomatose patient that we find the terminal point of political life transformed into a pure “bare life.”

According to Agamben, in being sustained by medical technology, Karen Ann Quinlan and Anthony Bland have been subject to a separation of their bare biological lives from their political and legal identities. However, despite the fact that their bodies are ‘reduced’ to their biological minimum, they are, Agamben claims, at the same time, absolutely subject to the legal decision on the time of death. This legal decision acts upon, and totally imprints, the body as bare life or biological remnant. Therefore, as Noys extrapolates, both Karen and Tony were “not withdrawn from power into the

biological but exposed all the more to the sovereign decision on death through being abandoned to the state of death in motion” (2005, 61-62). Thus the political nature of death is best exemplified by the two “waverings” explored in Chapter Two; time of death, and who decides it.

Power, the way Agamben reasons, thus does not find its limit in death, but instead, these waverings at the point of death are what permits our exposure to death without any limit. In a way, power escapes any idea of death as its limit through enforced survival, which allows it to extend into the body and to saturate the body with power. What I want to emphasize, however, is that this formulation of power is not a complete rejection of Foucault and his account of bio-politics. In fact, for Agamben, bio-politics is intimately tied to his own project on bare life in that bio-political mechanisms are at the heart of the zone of indistinction that has come to characterize modernity. It is bio-power itself that creates the “waverings” around the body of the overcomatose patient.

Agamben traces the emergence of bio-politics to declarations of rights, for it was through such declarations that we accomplished the transition from divinely authorized royal sovereignty to national sovereignty. According to Agamben, “the fact that in this process the ‘subject’ is...transformed into a ‘citizen’ means that birth—which is to say bare nature life as such—here for the first time becomes (thanks to a transformation whose bio-political consequences we are only beginning to discern today) the immediate bearer of sovereignty” (1995, 128). In the past, the principle of nativity and the principle of sovereignty have been separate (birth marked only the emergence of a subject), however, what marks the modern bio-political period is that they are now irrevocably united in the body of the ‘sovereign subject’ so that the foundation of the new nation-state may be constituted. Thus for Agamben, in order to understand the bio-political development of the modern state we must understand that “what lies at its basis is not man as a free and conscious political subject but above all, man’s bare life, the simple birth that as such is, in the passage from subject to citizen, invested with the principle of sovereignty” (Agamben 1995, 128).

As Agamben thus argues, we cannot consider the individual reduced to bare life (i.e. the overcomatose patient) outside of the context of bio-politics. According to his

reasoning, in promoting life itself the bio-political state carried out this management through, above all, a progressive generalization and redefinition of death. “And today, in discussions of *ex lege* definitions of new criteria for death, it is a further identification of this bare life—which is now severed from all cerebral activity and subjects—that still decides if a particular body will be considered alive or, instead abandoned to the extreme vicissitudes of transplantation” (Agamben 1999, 231-232). Thus what Agamben insists on is that the debate around the definition of death in modern culture is one that rests on the unspoken bio-political ground of “a further identification of bare life.” And thus we may be able to account for the rapid acceptance of brain death, despite the conceptual problems described in the previous chapter, because of its compatibility with Western bio-politics. However, Agamben argues that “what is left is left unquestioned in the contemporary debate on bioethics and bio-politics, in fact, is precisely what would deserve to be questioned before anything else, that is, the very concept of life” (2000b, 7).

The Quality of Life Ethic

For Singer, the Bland decision allows us to do just that. It allows us to go from an ethics that treats all life as sacred and of equal worth to a new quality of life ethic that decides which lives have value and which do not. Singer’s views have attracted many diverse opponents from Christian conservatives to disability rights activists to Holocaust survivors. These groups pose many challenges to Singer’s so called ethical revolution, I, however, would like to focus on those challenges put forth by Benjamin Noys who attempts to critique Singer from an Agambenean standpoint. While Singer’s work may not be representative of bioethics as a whole, it is, in fact, a *bioethics*—an ethics of life—and as such deserves consideration within Agamben’s politics of bare life.

Noys identifies several problems with Singer’s quality of life ethic due to the fact that it fails to take into account our exposure to death by bio-power in modern culture. The first problem Noys identifies is Singer’s misinterpretation of the old ethics of the sacredness of life. In fact, Noys contends, this ethics also involved a decision on the quality of life no different than the decision that Singer’s new ethics advocates. Noys follows Agamben in arguing that death is always a political decision, thus breaking down the distinction between these two seemingly contradictory ethical systems. Both ethics

thus produce the sacred politically as that which is abandoned. The sacredness,” Noys claims, “is defined through the exposure of the body to power and to the threat of death. It is the sacred man who may be killed and yet not sacrificed, the man who is produced as bare life” (Noys 2005, 87). The ethics of life as sacred does not in fact, as Singer claims, preserve all life equally, but instead rests on a decision of what would count as life and what could be left to die. “Singer does not seem to realize that this problem has always been central to Western culture. Therefore, his “new” ethics of the quality of life is not so new, and it may obscure the issue of life as sacred that it is supposed to solve or replace” (Noys 2005, 87).

Secondly, Noys points out that Singer’s argument that there are human lives which have value and lives which do not, is dangerously close to the distinction made by the Nazis between life and “life unworthy of being lived.” This criticism is not entirely unfamiliar to Singer, as many have drawn this comparison before simply for its shock value. His work *Rethinking Life and Death*, from which I have drawn his articulation of these two ethics, has even been labeled the “*Mein Kampf* of the euthanasia movement” (DeMarco 154). His work is routinely criticized as leading toward eugenics, infanticide, torture, and outright murder, however, Noys does not want to summarily dismiss Singer on this account alone. As Noys argues, it is not so much the problem that Singer’s ethics will return us to a Nazi project of genocide but that Singer “cavalierly” ignores the history behind the problems that he is trying to solve (Noys 2005, 86).

When we think of the Holocaust we often think of the Nazi concentration camps and gas chambers, however, the Nazi’s also exercised their power over life through the medical establishment. Slightly less familiar to us are the medical experiments preformed by Nazi doctors. Dr. Josef Mengele (who Singer has also been compared to) became infamous for his experiments performed on Jewish prisoners at Auschwitz. The Nazi’s had decided that Jewish life was not life at all and thus could be frozen, drowned, infected with disease, poisoned, suffocated, and sterilized. Moreover, the Nazis engaged in a program of eugenics in order to purify the German race of those whom they thought of as unworthy of life. All of this was done with medical authority for it was the medical administration of judgments on the value of life that led to the mass murder of Germany’s mentally ill and disabled.

Singer unwittingly puts his faith in the medical establishment to be able to make the decision on the “quality” of life that a patient is able to have, thus it is of little surprise that one of the places where Singer is the least popular is in Germany. What is more, however, is that at this time Nazi doctors were not the only ones in the medical establishment to attempt such programs. In fact, at the Doctor’s Trial at Nuremberg many argued in the doctor’s defense that their experiments were similar to others involving human subjects going on around the globe, making one wonder if these doctors were merely the most glaring example of something pervasive in most if not all medical research. And as Noys contends, “the exposure of life that was found under Nazism has not disappeared in the postwar democracies, due to the fact that bare life is still, and even more so, the ground of our political identities” (2005, 86). This means that a great deal more caution would need to be exercised when considering quality of life issues than Singer realizes.

As Noys points out, Singer is able to strengthen his argument by pointing to extreme cases, like that of Anthony Bland and Karen Ann Quinlan, cases that make this issue seem clear-cut because few of us would like to imagine ourselves in their places. The point that Noys wants to make, that I think Agamben would make if critiquing Singer, is that the definition of life as not fully human or as disposable is often not as clear-cut as Singer’s argument makes it seem for most cases are not as dramatic as his examples. Instead, as Noys points out, the definition of life as “unworthy of life” is highly politicized, as the case of Nazi Germany and other state racisms make clear (a point I will return to in the next section of this chapter with a discussion of Foucault). Although Singer wants to contest medical power and make it subject to ethical debate, he ignores the political nature of the decision that he is advocating needs to be made, a common problem in most bioethical debates, and this makes his ethics of the quality of life “historically naïve” as well as politically unaware (Noys 2005, 86).

Though Noys make four criticisms of Singer, the last one that I want to focus on here also focuses on Singer’s problematic parallels with Nazi politics of life and death. This time Noys focuses on Singer’s confident dismissal of “mere biological existence” as not actual life. In his book *Homo Sacer*, Agamben details the way in which the Nazi camps created a form of life that was reduced to mere biological existence: the camp

inmate reduced to the state of the “Muslim.” This form of bare life, Agamben argues could be considered bare life in its most extreme form. The “Muslim” or *Muselmann* was camp jargon for the inmate reduced to a state of living death, or as one survivor of the camps described, “a staggering corpse, a bundle of physical functions in its last convulsions” one that had given up on life (qtd. in Agamben 1999, 41). Agamben takes this concept and extends it to the point where he argues that the Nazi camps, in addition to being places of extermination and torture, were “also, and above all, the site of the production of the *Muselmann*, the final bio-political substance to be isolated in the biological continuum. [For] beyond the *Muselmann*,” he claims, “lies only the gas chamber” (1999, 85).

By Singer’s criteria of “quality of life” there would, it seems, be no reason to preserve these individuals. “What Agamben shows, and what Singer ignores, is that mere biological existence, life exposed to death, is not defined by science so much as politics. The decision on life and death depends on defining someone as bare life, as mere biological existence, which is what then exposes them to death” (Noys 2005, 86-87). Though Singer hopes that this new quality of life ethics will offer us something new and perhaps liberating, it instead seems to support the operation of sovereign power in society. As Noys argues, both Singer’s new ethics and sovereign power are in agreement that there are some people that can be killed without the commission of a homicide—that there are some people that can be defined as bare life and thus exposed to death. Singer ethics cannot contest this will of sovereign power, and is in fact complicit in it as they both agree that “mere biological existence is no real form of life but only life totally vulnerable to disposal” (Noys 2005, 87).

Sovereignty & Bio-Politics

As I have described in this chapter (and alluded to in those preceding it), Agamben views power in society as a combination of sovereign authority and bio-political mechanisms. For Agamben, power has always been simultaneously both which is why Agamben criticizes Foucault for trying to articulate a shift in power from one mechanism to the other. Though such fundamental paradigm shifts are crucial to Foucault’s work, in the *History of Sexuality Vol. I* and in his lecture series “Society Must Be Defended” at the Collège de France, Foucault did articulate a situation in which bio-

political mechanisms act in complete harmony with sovereign power—Nazism. While for Foucault this is an extreme case, the point Agamben wants to make is that such extreme cases are rapidly becoming the norm. In his mind, perhaps the reason why modern democracies were able to transform into totalitarian regimes and back again so quickly in the twentieth century is that these two forms of power are more in sync than we realize. At the thanatopolitical level, he claims, there are frightening similarities between democratic and totalitarian regimes, similarities which are being carried even further by the politicization of bare life.

While according to Agamben, Foucault completely abandons sovereign power, and thus death, as a critical part of power in modernity, I believe that Foucault's views on sovereign power are more complex than Agamben articulates. Though it is true that in his later work Foucault began to see the limitations of conceiving of power in terms of sovereignty alone, he states in many of those same writings that, despite the rise of bio-power, sovereign power has endured in one form or another—though subordinate to productive technologies of power (1979, 136). In a lecture delivered Collège de France on March 17, 1976 Foucault asked the question: “If it is true that the power of sovereignty is increasingly on the retreat and that disciplinary or regulatory disciplinary power is on the advance, how will the power to kill and the function of murder operate in this technology of power, which takes life as both its object and its objective” (2003c, 254)? For Foucault, racism was the only possible answer, and in his opinion, there could be no better example of the deployment of racism than the atrocities committed by the Third Reich.

Nazism, he claimed, “was in fact the paroxysmal development of the new power mechanisms that had been established since the eighteenth century” (Foucault 2003c, 259). No state made greater use of disciplinary mechanisms, “nor was there any other State in which the biological was so tightly, so insistently regulated” (Foucault 2003c, 259). The paradox of Nazi power was that while it was both disciplined and regulated, perhaps more so than any other state in modern history, Nazi Germany was also the most murderous state in history. According to Foucault, the Nazi's “effectively” combined sovereign and bio power; the power to make die with the power to make live through the mechanisms of racism. And while discipline and regulation effectively underpinned Nazi

society, “ultimately everyone in the Nazi State had the power of life and death over his or her neighbors,” and thus the sovereign power to kill was in fact dispersed throughout the entire social body (Foucault 2003c, 259).

This racism upon which the Nazi state was based introduced the power of death into bio-politics by performing two functions: first, it permitted the introduction of a break into the biological continuum of life, “between what must live and what must die” (Foucault 2003c, 254). In this Foucault has articulated a concept of bare life, though he cannot see how this operates throughout modern society more generally. In a sense, I agree with Agamben’s fundamental criticism of Foucault thus I will return to Agamben at the end of this section in order to readdress the ways in which Foucault may have been wrong that racism is the only cause for bio-power and sovereign power to exist simultaneously and with comparable influence.

For Foucault, bio-power’s principle objective is to produce and administer life up to the single limit of bio-political authority: death. This is what Foucault means when he asserts that in bio-political society individuals or populations are then “allowed” to die (let die) instead of having death inflicted upon them. What racism thus permits, in Foucault’s eyes is a division between the operations of bio-power across a particular population, a break that allows the operation of sovereign power to “make die” in a particular way, or addressed to a particular population. In essence, “all this is a way of fragmenting the field of the biological that power controls. It is a way of separating out the groups that exist within a population,” those that are worthy of life and those that are not (Foucault 2003c, 255).

Racism’s second function, according to Foucault, is in making the mass killing of individuals possible through the claim of biological purity, what he calls “fantasies of blood” in *The History of Sexuality Vol. I*. The Third Reich, he claimed, simply posed the imperative to its citizens that “if you want to live, you must take lives, you must be able to kill” (Foucault 2003c, 255). Racism in Nazi society thus also functioned on the goal of racial purity, the argument that one race was superior and that by killing off the other race one was somehow making their superior race healthier and stronger.

Though Agamben argues that bio-power and sovereign power have always existed together in society, for Foucault, it is only in Nazi society (and certain socialist

states) that we witness this deadly combination of sovereignty and bio-power through racism. Though I in no way want to suggest that doctors in hospitals can be paralleled to Nazis in the Holocaust, I believe that in his exploration of Nazi Germany Foucault may have hit on an interesting power dynamic. And while Foucault himself argued that modern racism is a basic mechanism of bio-political society, such that “the modern [bio-political] State can scarcely function without becoming involved with racism at some point, within certain limits and subject to certain conditions,” I argue, like Agamben, that certain power mechanisms, other than racism, can be exercised in order to perform at least the first function of racism that Foucault outlined: introducing a break into the biological continuum of life, “between what must live and what must die” (2003c, 254).

If Foucault’s fault is that he only sees racism as producing this break than Agamben’s major fault is that he sees everyone as equally vulnerable to such a division. In claiming that “we are all bare life,” Agamben ignores the fact that we are all not equally vulnerable to the sovereign power that inflicts death. Racism acts as merely one of many elements that structures the socio-political hierarchies in which we are all complicit. Though we are all exposed to death, this exposure is not evenly distributed. In modern society we must not only take race into account but gender, sexuality, socio-economic status, country, etc. A particular symptom of this is that in considering the cases of Karen Ann Quinlan and Anthony Bland Agamben fails to take into account that in Karen’s case the body being exposed to death is that of a woman and if there is something different in her exposure than that of Tony Bland.

Despite these faults, I argue that both Agamben and Foucault have something to offer this debate. In using the examples that Agamben provides I argue that this combination of sovereign and bio-power can work through other mechanisms than racism in order to kill, especially, as Agamben points out, when the distinction between life and death has become increasingly blurred. As Agamben points out, every society necessarily draws a distinction between citizens and sacred men. “It is as if every valorization and every ‘politicization’ of life...necessarily implies a new decision concerning the threshold beyond which life ceases to be politically relevant,” the threshold beyond which life “becomes only ‘sacred life,’ and as such can be eliminated without punishment” (Agamben 1995, 139).

Nazi Germany figures prominently as an example in many of Agamben's books because Agamben, like Foucault, sees something extreme in the way bio-political mechanisms and sovereignty were put to work during the reign of the Third Reich. For Agamben there is no better example in the twentieth century of bare life than the life of Jewish prisoners in concentration camps—life that can be killed without the commission of a homicide. However, if today there is no clear figure of the sacred man in modern law it is because, Agamben will argue, we all share the fate of the sacred man for we are all left exposed to death by power—a situation that he calls the “thanatopolitics” of modernity (1995, 115). And it is our exposure to death in modern culture that has caused the line between democracy and totalitarian regimes to become “indistinct.” In some way, Agamben argues, atrocities such as the Holocaust and Hiroshima have alerted us to the ways in which we are all now exposed to death in modern culture. Though, as I pointed out, Agamben fails to articulate how different populations might be more exposed than others to the threat of death in contemporary society, I take seriously his point that death has now become a statistical operation, an exercise in bureaucratic planning and governmental intervention. The fact remains that these new forms of mass extermination, regardless of who they directly impact, rely precisely on what Foucault would term the “bio-political” mechanisms that should promote life—planning, statistical calculation, population control. Thus for Agamben, such atrocities are not aberrations of our modern culture, but the product of it.

In the next installment of Agamben's work, *The State of Exception*, Agamben explores the combination of sovereign authority and democracy in more detail. For Agamben, modern democracies can also be compared to totalitarian regimes in their use of “emergency powers.” Though I will not dwell on this work, I will merely point out that Agamben sees that parallels between democracy and totalitarian regimes as going deeper than the space of this project will allow me to go. I will simply say that for Agamben, the problem lies in the fact that the sovereign power to declare the state of exception is the same power that invests individuals as worthy of rights. The disturbing implication of his argument is that the things we value in democracy (citizenship, rights, freedom, etc) are intrinsically linked to the absolute authority conferred by the state of exception—we cannot preserve one without the other. The question then becomes how

to resist a power that uses are very rights against us, how to resist a power that is invested in both life and death?

Conclusion

Resistance and Our Exposure to Death

Though as I have already indicated it is unhelpful for us to find something liberatory or authentic in the experience of modern death, it is also critical at this point that we do not resign ourselves to fear. Indeed, we seem to be facing two contrasting fears with regards to our exposure to death in modern culture. The first is a fear of death itself. It seems, that as Foucault suggested, in a society with bio-political mechanisms, many are anxious or fearful that death will come too soon (or that death will come at all). For these individuals death does truly represent a limit, and thus these people are particularly susceptible to the unspoken suggestion that medicine may be able to indefinitely postpone, and perhaps ultimately defeat, death. For others, however, this suggestion is the very origin of their fear. This second fear is that medicine, “in its attempt to defeat, or at least defer death, will impose a prolonged and undignified *life*.” Indeed, it is such a fear that seems to be the motivation behind the increasing clamor for a right to die, and the right to have a physician assist in ordering this most personal choice” (Tierney 1999, 253).

Since, however, none of these common reactions seem to provide us with any critical solutions, I believe we must reformulate the problem. I have attempted to rethink our exposure to death as a political question throughout this work so that we might at last devise some sort of resistance to the continuing extension of political power over our bodies. In this way I hope to avoid the pitfalls of contemporary solutions (i.e. prolonging life and the right to die,) to our anxiety towards death in modern culture as well as ethical solutions like Peter Singer’s that try to draw a line between qualified life and mere biological existence. In order to begin to conceptualize what form this resistance would take I believe we must again return to work of both Foucault and Agamben. These two authors take contrasting approaches to the task of resisting power, and though I have ultimately sided more with Agamben with regards to how power works on the body, I

want to reclaim Foucault's notion of resistance in this conclusion. I suggest that instead of relying on Agamben's idea that we can somehow escape or flee from power, Foucault's model of resistance needs to be reworked in order to account for bare life.

Foucault on Resistance

Many who have studied Foucault focus on the conception of power, prevalent in his early work, as an all encompassing force. In fact, some of his most salient critics converge on the seeming lack of options that subjects can pursue in order to subvert the institutions that exercise power upon them. Some have gone so far as to accuse Foucault of creating a theory of power without freedom or truth. These criticisms usually derive from Foucault's discouraging assertion that the self can *only* exist as a subject, and thus does not exist outside of being subjugated (1978, 155). Yet for Foucault, resistance is an important possibility, for as he maintains, all those bound in relations of power have resources for "they are always in the position of simultaneously undergoing and exercising this power" (1978, 98).

While Foucault spent a great body of his work explaining how institutions perform subjugation, his later work focuses explicitly on how subjects are able to dynamically shape their own subjectivity. This is because power, for Foucault, is relational—a give and take between two or more forces and not simply unidirectional control. Power relations are dynamic and constantly in flux, for we are not merely acted upon by power, we dynamically shape and reshape the situation. Thus, for Foucault, power always necessarily implies resistance to it, for if there was no resistance we would not have a situation of power at all, but one of domination (1994f, 167). "Even when the power relation is completely out of balance, when it can truly be claimed that one side has 'total power' over the other, a power can be exercised over the other only insofar as the other still has the option of killing himself, of leaping out the window, or of killing the other person" (Foucault 1994h, 292). Though these acts of resistance are certainly extreme, the point is that even in asymmetrical relations of power, freedom can still be found.

It is simply inadequate to claim that because relations of power are everywhere that freedom is impossible. We are in fact, in Foucault's mind, more free than we know. While Foucault wants to give us the tools to recognize these opportunities for freedom,

he leaves his theory of resistance purposely vague. Resistance, he argues is contextual and can take on a number of different forms, as it is an effect of the power relations that oppose it. Thus it is not practical to identify specifics because while a certain technique of the self may be considered resistance to one individual, it may not be to others. Nor will it always be a form of resistance to that particular individual because forms of resistance are often subverted by the relations of power they were intended to resist and subsequently reworked as techniques of domination. The main point, however, that Foucault wants to stress is that there is no escaping this perpetual “give and take.” “We cannot jump outside the situation,” he claims, for “there is no point where you are free from all power relations” (Foucault 1994f, 167). All we can hope to do is to continue to resist, and as the dynamics of power change, so too must our techniques of resistance.

In *The History of Sexuality Vol. 1* Foucault does give us a glimpse of what he believes a politics of resistance might look like. Foucault claims that resistance can be found in “a different economy of bodies and pleasures,” thus in order to resist the “austere monarchy of sex” we must conceive of a new body that does not find truth in its sex but uses sexuality to arrive at a multiplicity of relationships (1978, 159). Foucault’s search for this new body leads him to an interest in S&M as an unconventional art of sexual practice. Foucault observed that the power relations in S&M are extremely fluid, “there are roles, but everybody knows very well that those roles can be reversed...or, even when the roles are stabilized, you know very well that it is always a game” (1994f, 169). This new body, however, is not something outside of relations of power, it works within them to resist them by making them more fluid.

Agamben and the Figure of the Refugee

Agamben argues that, although Foucault’s thinking of resistance is profoundly important, the same problem of bare life that haunts his formulation of power is also unaccounted for in his theory of resistance. In trying to create a “new body” to resist power Foucault, in Agamben’s mind, neglects the way the body is currently formulated as bare life. “The ‘body’ is always already a bio-political body and bare life, and nothing in it or the economy of its pleasure seems to allow us to find solid ground on which to oppose the demands of sovereign power” (Agamben 1995, 187). The body is not solid ground because the body is always decomposed by power into bare life. Instead, we need

to find some way out of the play of sovereign power that only leaves us as bare life, and that forces that bare life into a series of social or legal identities. What he suggests is that trying to resist power in the “give and take” formulation of Foucault never allows for any meaningful freedom because the site of our resistance—bare life—is also the site of our subjugation.

This means, for Agamben, that we must go beyond Foucault if we are to find an adequate politics to deal with our exposure to death in modern culture. For Agamben, we must find a new figure of bare life from which we can construct a new politics of resistance. For Agamben, this figure is the refugee because it is a figure completely abandoned by sovereign power. Human rights, Agamben argues are not universal in any meaningful sense, they are conferred upon us as citizens of a particular nation-state. “If in the system of the nation-state the refugee represents such a disquieting element, it is above all because by breaking up the identity between man and citizen, between nativity and nationality, the refugee throws into crisis the original fiction of sovereignty” (Agamben 2000b, 21).

For Agamben, more and more figures in modernity are coming to challenge the saliency of the nation-state. With the decline in secure political identities, it is the insecurity of the identity of the refugee that makes him or her the ideal figure of the people of our time. To be absolutely abandoned by power, Agamben argues, opens up the possibility of a new politics that escapes the limits of state and legal identity. In a sense, the refugee has lost “humanity,” in their loss of a state. They are left with “nothing,” but this nothing, this complete and total exposure to death and power is something, for Agamben it is the “truly human” (Agamben 2000b, 6). Although the refugee is subject to power by being abandoned by it, Agamben also sees in this ‘position’ the possibility of building a new politics in the refugee’s exodus from power. This articulation of resistance as exodus is key for Agamben, to simply resist power from within is not sufficient, we must actively flee from a sovereign power that can create bare life.

A Reformulation of Resistance

Despite the attractiveness of Agamben’s suggestion that we can somehow escape power, I argue, that Agamben’s formulation of resistance is problematic on two counts.

First, Agamben's figure of the refugee romanticizes this state of being while neglecting the very real suffering that a person in such a position is forced to endure. Most people would not choose to be refugees, thus it begs the question of how this can be seen as a position of empowerment? Second, Agamben's idea that we can escape power is fundamentally naïve. Though Agamben's reformulation of power in modernity points to Foucault's neglect of bare life, we cannot throw out all of Foucault's work on power. Most importantly, we cannot simply abandon, without good reason, his insight that getting outside of power is impossible. In my opinion, reformulating power to take bare life into account does not necessarily imply that we should negate this crucial insight. Agamben himself even acknowledges this fact as he argues that bare life, and thus exposure to death, has become a feature of all of our identities in modernity. Where does this leave us to flee to?

Instead of abandoning Foucauldian resistance, I believe the concept need to be reworked. I argue that we must tackle the problem of bare life within the relation of power in which it exists rather than futilely trying to escape power itself. Thus our exposure to death must be considered through an analysis of how the boundary between life and death becomes put into place. For Foucault, when power takes life as its object, then life becomes the possibility of resistance. Thus it might follow that resistance to our exposure to death must be found in death itself.

This position, however, is not without its problems. Is such a position merely a reassertion of "the right to die?" Are we to believe that the only possible response to our exposure to death is to desire death itself? As Franco was kept alive by a plethora of life support technologies, he was heard to murmur "how hard it is to die" (qtd. in Noys 2005, 53). Must we then combat the sovereign power of doctors to decide when death occurs by actively seeking to end our life? Just as Foucault points to new lifestyles with flexible identities that are able to resist power, Noys asks if such a politics could be extended to "deathstyles" as well (2005, 51)? "Death would be just another product in the postmodern cultural supermarket, and we could choose our style of death from any number of historically and culturally different forms" (Noys 2005, 51).

Unfortunately, however, it would be difficult for such "deathstyles" to avoid the sovereign power of the decision on time of death. Even if we were to call for the right to

end our medical treatment or for medically supervised euthanasia, then we would still remain within the space of medical power as the space of sovereign power. To call for such options is thus not a meaningful form of resistance because, as the situations of Karen Ann Quinlan and Anthony Bland demonstrate, such options remain within the space of the struggle over who holds the power over the decision. For Thomas Tierney, however, the “most heartening possibility” that has emerged from such discussions centers neither on fear nor anxiety. Instead he advocates that resistance can take place in the form of an “ironic laugh” at the lengths that we go to both claim ownership of our bodies and to preserve them (Tierney 1999, 253). Such a lighter response Tierney hopes will stimulate new techniques of the self to form, techniques that are more reflective on what we are actually trying to preserve through the miracles of modern medicine.

Though it may be beneficial to meaningfully consider the politics of death and dying, the sad truth is that for many, calling for the right to die is merely an unreflective, defensive reaction to what they see as someone imposing on their life. We need to consider the larger questions involved in issues of death and dying, mainly the political dimension of when death occurs and the power plays involved in who actually makes that decision. We need to critically rethink the role that medicine plays in creating and maintaining modern identities and how it shapes our experience of death in modernity. However, it is also important that since not all individuals are exposed to death equally, we must conceptualize resistance to be flexible and individual. What we need are multiple possibilities of challenging our exposure to death that do not strengthen or reinforce the current medical and legal authority. Though I have not been able to provide any concrete examples of how such resistance might take shape, I hope that in trying to understand the power relations surrounding time of death I have made a step in the right direction.

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