



CREaTE

Canterbury Research and Theses Environment

Canterbury Christ Church University's repository of research outputs

<http://create.canterbury.ac.uk>

Please cite this publication as follows:

Hardes, J. (2013) Fear, sovereignty and the right to die. *Societies*, 3. pp. 66-79.
ISSN 2075-4698.

Link to official URL (if available):

<http://dx.doi.org/10.3390/soc3010066>

This version is made available in accordance with publishers' policies. All material made available by CReaTE is protected by intellectual property law, including copyright law. Any use made of the contents should comply with the relevant law.

Contact: create.library@canterbury.ac.uk



Article

Fear, Sovereignty, and the Right to Die

Jennifer J. Hardes

Department of Sociology, University of Alberta, 5-21 HM Tory Building, Edmonton, Alberta, T6G 2H4, Canada; E-Mail: jennifer.hardes@ualberta.ca

Received: 31 October 2012; in revised form: 4 January 2013 / Accepted: 5 January 2013 /

Published: 16 January 2013

Abstract: This paper addresses the “right to die” through the lens of Derrida’s *The Beast and the Sovereign, Volume One*. Specifically focusing on the case of Tony Nicklinson v. Ministry of Justice, 2012, the essay posits two things. First, Derrida’s insight helps us understand how a “fear of death” is a fundamental performative feature of sovereignty politics. Second, in order to maintain its performative role, sovereignty must perpetuate the belief that “man is wolf to man.” I argue that, in right-to-die cases, this has the effect of precluding compassionate reasons for taking the life of another. Thus, I posit that these two points, in part, explain how right-to-die cases fail on appeal. All is not lost, however, as this essay advances Derrida’s position that these performative workings of sovereignty, which currently preclude the right to die, are entirely deconstructable. As such, exploring how right-to-die cases are articulated in law permits a deconstruction of sovereignty politics and allows us to open up other ways of thinking about the relation between sovereignty, life, death, and our relationships with “others”.

Keywords: Derrida; Hobbes; sovereignty; right to die; biopolitics; compassion

1. Introduction

On 16 August 2012, Judge Mr. Justice Charles ruled that plaintiff Tony Nicklinson’s appeal to end his life was denied [1]. Nicklinson’s harrowing story of a formerly active man who, after a stroke, was left severely paralyzed with locked-in syndrome, has attracted widespread attention in the United Kingdom. His case has once again called into question the right to assisted death, or voluntary active euthanasia, that was publicized several years earlier as the nation watched Dianne Pretty lose her battle against the courts in 2002 [2]. Scholars like Patrick Hanafin [3] have recognized an important “biopolitical” moment in the operational logic of these right-to-die cases. According to Hanafin,

right-to-die cases such as Nicklinson's provide an interesting tension between an individual's desire to die and the role of the state to "protect" life. If we accept Foucault's [4,5] claims that governance appears to function by cultivating life—*i.e.*, that the state is invested in managing and securing the functioning "life" of its population—then cases where individuals desire death allegedly disrupt such a life-advancing logic. While this is extremely insightful, I appropriate some of Derrida's thoughts on sovereignty presented in *The Beast and the Sovereign, Volume 1* [6] in order to further open up our analytic understanding of right-to-die cases. Specifically, I draw on Derrida's treatment of biopolitics as that which operates according to a particular logic of sovereignty of the "performative" type. This sovereignty perpetuates a "fear of the other" in order to bring sovereignty into being as that which performs the role of "protector" of life. Moreover, this sovereign authority sustains itself as a "necessity" by continuing to perpetuate the notion that humanity is, by nature, "wolf-like." This essay considers how sovereignty, which is sustained by the notion that we require protection from one another for fear of threat, is challenged in cases where an individual desires their own death at the hands of a "wolf." Moreover, it allows us to form some understanding of why right-to-die cases seem to fail on appeal, and why the act of taking a life, even if this is desired and thereby deemed "voluntary," has, for decades, been treated as "murder"—the most serious form of homicide.

2. On Fear and Sovereignty

Near the end of *The Beast and The Sovereign*, Derrida takes to task the Foucauldian distinction between sovereignty and biopolitics. He claims that "There are incredible novelties in bio-power but bio-power or zoo-power are not new" ([6], p. 330). For Derrida, all political arrangements of power inclusive of biopolitics operate according to a logic of sovereignty, which renders itself "absolute" through performances of what he calls "indivisibility." At the heart of these performances is a necessary deferral to fear. As Derrida writes,

as there is no law without sovereignty, we shall have to say that sovereignty calls for, presupposes, provokes fear, as its condition of possibility but also its main effect. Sovereignty causes fear, and fear makes the sovereign ([6], p. 40).

Derrida's reflections on fear refer to it in the Hobbesian sense, as that which is integral to "sovereignty" politics, but also in the Foucauldian sense, relating it to a focus on "biopolitical life." As he writes, "Fear is primarily fear for...one's own body proper, *i.e.* for life. Life lives in fear" ([6], p. 41).

According to Derrida, fear for one's life is what authorizes sovereignty as a mode of governance that is meant to protect life. However, according to Derrida, we move "from one fear to another" ([6], pp. 42–43). When we come together as a people under sovereignty, Derrida suggests that we shift from fearing death in a state of nature, to fearing death at the hands of the sovereign. While the sovereign order and its law is there to protect us, we become fearful of legal transgression. Thus, as Derrida expresses, "being the subject of one's fear and being the subject of the law or the state, being obliged to obey the state as one obeys one's fear, are at bottom the same thing" ([6], p. 43). The transfer to a fear of the sovereign, however, does not distill the fear that we feel toward others. Not only does sovereignty instill fear in us if we threaten to transgress its laws, but it appears that sovereignty also perpetuates the fear of the other that we otherwise felt in the state of nature. It does so in order to continue to present itself as a necessary mode of protection, and to secure obedience. In this regard,

Derrida explains how, to show that it is necessary, sovereignty propagates an image of man as “wolf” to man, such that sovereignty is a guarantor of life by “keeping the wolves at bay.” This relies, posits Derrida, on what Schmitt calls the “anthropological basis for political theory”—“a pessimistic anthropology, which has a vision of man as bad, corrupt, dangerous, fearful and violent” ([6], p. 44).

Presenting sovereignty in such a way as indivisible, grounded in fear, can be said to have a two-fold effect that both totalizes and individualizes humanity. First, it totalizes “the people” into a single body through a social contract, whereby the people collectively transfer power to a sovereign whom they obey out of the desire for protection. Second, it individualizes “the people” who, despite being a “unified” body, desire individual protection from one another. Thus, sovereignty brings us together, but also operates through the continued separation of the people in order to sustain its necessary role of “protector.” This simultaneous totalization and individualization is akin to Roberto Esposito’s [7,8] reflections on the “immunity paradigm.” In this paradigm, the social contract like that which Hobbes’s sovereign enunciates, grants us a “liberal” type of freedom that frees us *from* others; thus, liberalism separates us from others, or “immunizes us” from one another. Through liberal concepts like personhood, property, and rights, we are secured from one another, which allow us to live, in Alexis de Tocqueville’s words, “side by side unconnected by a common tie” ([7], p. 76). In this account, sovereignty is generated by a common will for self-preservation. This will is grounded in a fear of death at the hands of the other. Sovereignty must appear to allay this fear of death, while at the same time perpetuate it, in order to preserve itself as a necessary arbitrator of freedom.

In short, law, as that which is “endowed” with sovereignty’s “content” ([9], p. 147), is rationalized as a mode of protection from one another. Sovereignty is alleged to step in and save us from each other and our selves, giving us a life “free” from fear. This is all a ruse, however, according to Derrida. We are not “wolf” to one another, but, rather, sovereignty—and as its extension, law—must perpetuate this “pessimistic anthropology” to secure its authority. It is therefore a “prosthetic” sovereign, because it is “artificial” ([6], p. 28). It is a “performance” of sovereignty, which presents the sovereign as an all-powerful image of the people—a “unified” body, the Leviathan ([6], p. 28). The construction of the fear of the other as “proper” to man generates this image of an all-powerful sovereign. It is framed in a similar way to how Foucault describes power relations, as a “theatre where presentations are exchanged,” that preserves the sovereign’s necessity ([10], p. 92). Fear, therefore, according to Derrida, underscores the inception of the sovereign—and biopolitical—order and, furthermore, sustains that order: “we shall have to say that sovereignty calls for, presupposes, provokes fear, as its condition of possibility but also as its main effect. Sovereignty causes fear, and fear makes the sovereign” ([6], p.40). This leads to two questions in this essay. First, how does sovereignty “call for,” “presuppose,” “provoke,” and “cause” fear in right-to-die cases? Second, how does sovereignty “perform indivisibility”—*i.e.*, how does sovereignty present itself as “absolute” and necessary?

3. Man as Wolf to Man

Tony Nicklinson was certain that he wanted to end his life, so much so that he noted prior to the hearing of his case in 2012 that “I have wanted my life to end since 2007 so it is not a passing whim... A decision going against me condemns me to a life of increasing misery” ([1], paragraph 14). His narrative has been well broadcast across the UK media. Nicklinson is depicted as a formerly active man—a rugby player and avid skydiver. Following a business trip where he suffered from a

devastating stroke, Nicklinson was left paralyzed below the neck and unable to speak. Able to move his head and eyes only, Nicklinson's form of communication had since been through a computer that he controlled through eye blinking. A statement recorded in the judgment on his case shares Nicklinson's thoughts:

My life can be summed up as dull, miserable, demeaning, undignified and intolerable...it is misery created by the accumulation of lots of things which are minor in themselves but, taken together, ruin what's left of my life. Things like...constant dribbling; having to be hoisted everywhere; loss of independence, ...particularly toileting and washing, in fact all bodily functions (by far the hardest thing to get used to); having to forgo favourite foods; ...having to wait until 10:30 to go to the toilet...in extreme circumstances I have gone in the chair, and have sat there until the carers arrived at the normal time ([1], paragraph 13).

Despite Nicklinson's appeals to be allowed to end his life through voluntary active euthanasia—which would mean that someone else such as his wife, Jane, or a physician, could end his life—his case was denied in August, 2012. It was acknowledged in the court report that, in other countries such as Switzerland, the right to die has been legalized. However, while the UK has advanced some laws regarding end-of-life decisions—for instance, the Suicide Act of 1961 [11] decriminalized individuals who attempted to commit suicide—the UK does not recognize voluntary active euthanasia as lawful. Thus, Nicklinson, whom the court recognized could not end his own life (other than through self-starvation), required the assistance of another, which is an act that is not currently immune from criminal conviction in the UK at present date ([1], paragraph 15). Although a number of advocates for Nicklinson's position have advanced forms of appeal, including Lord Joffe who has presented Parliament with several amended bills regarding the right to die, UK law appears to be “bound” to the belief that voluntary euthanasia—in this case appearing to be conflated with the term “mercy killing” to encompass the notion of a “consented death”—should in no way be decriminalized. Instead, law stipulates that the actor who ends a life is inevitably a “murderer,” regardless of whether the act was committed in full accord: “It has been established for centuries”, stated the court, “that consent to the deliberate infliction of death is no defence to a charge of murder” ([1], paragraph 57, s. 7).

In Nicklinson's case, such deferral to existing precedent is interesting in the context of life and death decisions because precedent responds to mercy “killing” and voluntary euthanasia in the context of murder as if this were “inevitable.” Reflecting upon this “inevitability” through Derrida's insight into sovereignty politics is most illuminating. According to Derrida, “Political sovereignty presupposes the determination of an enemy.” Moreover, it “needs an enemy to be what it is,” and is “not limited to...state structure” ([6], p. 77). This friend/enemy relation is arguably constructed through law in the case of the right to die, as evinced in Nicklinson's case. It comes to the fore in the legal proceedings, whereby the appeal document clearly outlines a link between mercy killing and the notion of a bellicose relationship with the other. This bellicose relation is defined through the historical legal example of the duel:

this proposition is established beyond doubt by the law on dueling, where even if the deceased was the challenger, his consent to the risk of being deliberately killed by his opponent does not alter the case ([1], paragraph 57, s. 7).

The duel, deemed analogous to mercy killing in Nicklinson's court judgment, might prompt some sort of response here. It is deemed analogous because it deals with a scenario whereby a person consents to

his or her own death, yet the person who commits the consented act is not exonerated. In drawing on the duel by way of example, one cultivates an image of two subjects embedded in a “theatrical presentation” of power, or a war-like “event” ([10], p. 92). Such a presentation of events is akin to the process that Derrida suggests is the rationalization of sovereign authority. Perpetuating the belief that “man is wolf to man,” and therefore that we should fear death at the hands of the other, is how sovereignty asserts its authority as the necessary protector and guarantor of life. It is no wonder, in cases where an individual challenges this fundamental relation between fear and sovereignty, that the moment of deconstruction is deferred to humanity’s “inherent” beast-like quality: sovereignty must perpetuate the belief that we fear death, notably at the hands of the other, from whom the sovereign protects us. In the case of the right to die, this appears to occur by framing compassionate death in the context of a criminal act whereby the other is always, inevitably, a “murderer.”

Deferring to such bellicose examples as dueling arguably reasserts a binary between friend and foe through the perpetuation of fear. Even under a sovereign order that advances the values of liberal individualism—that is, freedom to self-determination, and therefore an individual “sovereignty over oneself” of sorts—state sovereignty, as the “absolute” protector of such freedom, must cultivate the notion that one’s neighbor is to be feared through recourse to the ‘essence’ of human nature as wolf-like.

recognizing a partial excuse of acting out of compassion would be dangerous. Just as a defence of necessity ‘can very simply become a mask for anarchy’, so the concept of ‘compassion’—vague in itself—could very easily become a cover for selfish or ignoble reasons for killing, not least because people often act out of mixed motives ([1], paragraph 54, s 7.7).

Thus, the court is clear to remind us that it would be dangerous or “anarchic” to fully believe that people will always act out of compassion. It reminds us that, while we may have left behind a “state of nature,” our civil “neighbors” are not to be trusted; we should only trust the sovereign who has our best interests at heart. The interests of the other cannot be “known”; they are always particularized against the universal “good” interests of the benevolent sovereign. The compassionate care for another’s life arguably serves to enunciate a political practice of sovereignty that defers to legal precedent grounded in an essential notion of humanity’s essence as “wolf-like.” Without this recourse to man’s nature as corrupt or bad and something to be feared, we might question the very role of law and legal sanctions. The friend/foe distinction therefore effectuates and sustains sovereignty, and it does so through constructing compassionate cases as sinister. In Nicklinson’s case, the Commission interestingly posits the “problem” of mercy killing as it relates to compassion:

Under the current law, the compassionate motives of the ‘mercy’ killer are in themselves never capable of providing a basis for a partial excuse. Some would say that this is unfortunate. On this view, the law affords more recognition to other less, or at least no more, understandable emotions such as anger (provocation), and fear (self-defence) ([1], paragraph 54, s 7.7).

This passage highlights two important, interrelated points. First, it identifies that “compassion,” framed as a more positive virtue, is not recognized in law. Second, it contrasts this compassionate motive to less virtuous reasons for ending a life that are framed in terms of fear and anger. Thus, the Commission recognizes how “lesser emotions” or negative precepts like anger and fear can be considered acceptable motives for the taking of a life that lessen a conviction from murder to “manslaughter.” For instance, if one acts out of a fear for one’s life, this can be considered self-defense and therefore not

murder of the first degree ([1], paragraph 54, s. 7.7). Likewise, if one argues that one was “provoked” into action that led to another’s death, one can also acquire a reduced sentence. However, in UK cases of mercy killing whereby a subject acts out of “compassion,” subjects are not exonerated or granted a status of “manslaughter” and instead are afforded the status of “murderer.”

Derrida’s insight into sovereignty might help us explain this acceptance of other motives more readily than the motive of compassion. Discernably, the first and second acts (anger and fear) do not contradict a sovereign logic. This is so because, arguably, they work alongside the “wolf-like” traits that sovereignty posits as essential to humanity. Thus, while individuals may have challenged sovereignty in the sense that they took matters of “self-protection” into “their own hands” as opposed to allowing the sovereign to protect them ([6], p. 40), this does not contradict a logic which purports that the other cannot be trusted. These cases instead replicate the sovereign logic because they justify its very existence; they justify the assumption that we fear death, and that the other can cause such death. The case of anger or provocation does not contradict but, rather, reinforces the “nature” of humanity as bellicose and war-like, which acts rashly and therefore requires a sovereign to maintain order and protection. In these examples, law and sovereignty “protects” the vulnerable—the performer of the act. The person acting from fear is vulnerable for their life; the person acting from provocation is vulnerable to their “nature,” both of which the sovereign can “forgive.” In the case of Nicklinson, however, the “other,” the “doer” of the act of death—the mercy killer or the physician—is not “vulnerable.” Instead, they are framed as the “murderer,” and Nicklinson, in turn, is framed as the “vulnerable,” despite his claim otherwise as a self-determined liberal sovereign subject. Law strips him of his ability to decide: he is made vulnerable, and therefore is not “the strongest.”

4. Reason of the Strongest

The ultimate decision over life and death can be related to Derrida’s discussion of the founding and sustaining violence of sovereignty and law that he refers to as “reason of the strongest” ([6], p. 34). This means that sovereignty cannot exist without force. Quoting La Fontaine, Derrida notes in *The Beast and the Sovereign* that “The reason of the strongest is always the best” ([6], p. 34). Likewise, in *Rogues* he posits that “no sovereignty without force, without the force of the strongest, whose reason—the reason of the strongest—is to win out over everything” ([12], p. 101). The deferral of the Commission in Nicklinson’s case to “murder” is, arguably, made possible through the fact that the desire to die touches on, and potentially unravels, a binary with life and death. This binary sustains the sovereign’s authority as that which is a necessary protector from death; the sovereign is the strongest, after all. This strength and authority must, therefore, be sustained, even if someone like Nicklinson desires death and does not want this “protection.” Such “protection,” then, operates as a means to sustain sovereignty as indivisible and also maintain an essential link between sovereignty and obedience through recourse to the sovereign protection from acts of murder—or “threats” to one’s life, as well as the value of life and need for sovereign order.

If state sovereignty appears as the example of absolute sovereignty in the *Beast and the Sovereign Volume One*, it is possibly because this has historically been treated as if it is that which is granted—or, better, grants itself—the original right to preserve life, but also to take life (see, for example, [13], p. 138). Here, we might recall Derrida’s criticism of Agamben’s [14] enunciation of sovereignty ([6], pp. 315–334). Derrida considers problematic Agamben’s all-powerful sovereign, who allegedly has the

capacity to turn into a thanatopolitical machine. As Derrida writes, Agamben draws on Aristotle's distinction between *zoe*, a life common to all living beings, and *bios*, a life common to political community, that he argues come to merge under sovereign governance. Rather than sovereignty saving us from a state of nature, as Hobbes declared, Agamben claims that sovereign governance renders all life *zoe*, or "bare." He argues that this exposes us to an unconditional capacity to be killed. In seeking to "overcome" this problematic, Agamben is left with only a complete anarchic overturning of sovereignty *in toto*. Derrida deconstructs this biopolitical sovereignty toward the end of the first volume of *The Beast and the Sovereign* and speaks to this sovereign ability to enact violence in the name of the protection from fear that in turn perpetuates such fear and violence. If Derrida is reluctant to accept Agamben's suggestion of a complete renouncement of sovereignty, it is because the latter posits sovereignty as inevitably "absolute."

While Derrida deconstructs the grounds that sustain the belief in the necessity of absolute sovereignty, he does not deny that sovereignty *appears* real. Thus, he does not deny that sovereignty posits itself as indivisible, through the deferral to force. In *Rogues*, Derrida speaks of this "autopositioning of ipseity itself" as the "source of every 'reason of the strongest' as the right [droit] granted to force or the force granted to law" ([12], p. 12). Thus, state sovereignty instates and maintains its sovereign authority through a deferral to force, or the force of law. The force of the sovereign or legal decision becomes the event of reason. Reason and force unite in this "reason of the strongest." In most cases, this occurs silently, meaning that sovereignty can act as it wills, without challenge. Arguably, it does so in right to die cases through two key deferrals. First, it defers to a notion of sovereignty as representative of a unified "will" of the people, which in turn allows for it to claim that it is "democratic" and therefore universally "good." Concomitantly, it does so through an appeal to "life"—or the sanctity of life—as the ultimate normative good that rationalizes the aforementioned unified will. As Derrida expresses, "it is silence, the silent order that commands and leads the world" ([12], p. 4); sovereignty is "silent and unavowable" ([12], p. 100).

In the first example, sovereignty claims that it is founded on the universal will of the people, which operates as a unified body, the "Leviathan." Such "unification" is a means of legitimating the founding violence of sovereignty. As Foucault wrote: "It's what you wanted, it is you the subjects who constituted the sovereign that represents you" ([10], p. 98). This "universally" willed sovereignty, is, however—as explored throughout this essay—a ruse. There is a paradoxical feature to democracy whereby "sovereignty is incompatible with universality even though it is called for by every concept of international, and thus universal or universalizable, democratic, law" ([12], p. 101). This becomes apparent in Nicklinson's case where changes within English common law are regarded as acceptable if applying legal precedent, but unacceptable in cases like Nicklinson's where revisions around murder would have to be changed through parliamentary law—or parliamentary sovereignty—itsself. Accordingly, Parliament is deemed "democratic" in such a way that it considers itself to be universally representative of "the interest of the state." For instance, in response to the question of "exception"—hence, why law cannot treat examples case by case—the Commission drew on the division between common law and parliamentary law. The former, common law, is considered that of custom, whereas the latter, parliamentary law, is a matter of decision from a "democratic" body:

As to constitutionality, it is one thing for the courts to adapt and develop the principles of the common law incrementally in order to keep up with the requirements of justice in a changing society, but major changes

involving matters of controversial social policy are for Parliament. There is ample authority for that proposition. Lord Reid said in *Shaw V DPP* [1962] AC 220, 275: ‘Where Parliament fears to tread it is not for the courts to rush in’ ([1], paragraph 79).

The deferral in the above cited example is to Parliament as the authority which determines decisions regarding the criminalization of acts of murder through the application of “fundamental principles,” rather than “changing economic conditions and habits of thought” that occurs through common law ([1], paragraph 80). This deferral to Parliament is implicated in a logic of law that attempts to appeal to both the particular and the universal. Common law operates through legal decisions set as precedent by judges. In this regard, it is considered local or “particular” to some degree. However, this common law can only fundamentally be amended on the basis of a universal appeal or reach—hence the “finality” of the decision. This deferral to Parliament as that which has the power to determine end of life decisions potentially serves to frame a version of sovereignty as an arbitrator of justice. The sovereign is presented as a “democratically willed” enunciation, and one whose decisions are universally applicable.

Another deferral, which supports the “reason of the strongest” as that which has absolute universal reach, is “the sanctity of life” and the state interest in “life” above all other interests. The Commission in Nicklinson’s case drew on the words of Lord Mustil, which read:

So far as I am aware, no satisfactory reason has ever been advanced for suggesting that it makes the least difference in law, as distinct from morals, if the patient consents to or indeed urges the ending of his life by active means. The reason must be that, as in the other cases of consent to being killed, the interest of the state in preserving life overrides the otherwise all-powerful interests of patient autonomy ([1], paragraph 57, s. 9)

Most compelling in this statement is the emphasis on the “interests of the state” over and above Nicklinson, who, as expressed earlier, appears to be “particularized” as an individual. His particular interests are incompatible with the state’s preservation of life, whereby the latter is deemed above all to be a higher moral good.

The Commission also drew on other examples that contrasted with Nicklinson’s case to explore if and when ending a life would be considered legally acceptable. These other examples arguably presented moments of deferral that allowed the Commission to formulate reasons to deny Nicklinson’s appeal. Interestingly, such examples deferred to a normative investment in sustaining life, as expressed in the sanctity of life argument above. For instance, as posited earlier, one such example given was that of self-defense. In this instance, the act of self-defense is said to operate according to a desire to live, which does not conflict with the role of sovereignty as a guarantor of life’s preservation. The only transgression here is that one has taken matters into one’s own hands, and removed the role of the sovereign. In most cases, this type of act would not be acceptable, because the sovereign contract means that one transfers such role of “protector” to sovereignty. However, as Derrida recognizes and as indicated earlier, this type of self-protection might still occur in cases where such sovereign authority could not possibly offer immediate protection ([6], p. 40). Thus, the transgression does not challenge or undo the sovereign’s authority, or its functional role.

In addition to the matter of self-defense, the Commission also drew on the case of *Re A (Children) (Conjoined Twins Surgical Separation)* [2001] to offer another example of “death” that is deemed acceptable when granted “in favor of life” ([1], paragraph 70). In this case, twins, Jodie and Mary,

were born conjoined. Mary was reliant on an artery that connected her to Jodie; however, she would not survive as a singleton. If doctors did not separate the twins, neither would survive, but if they did separate them, Mary's life would inevitably be lost. It was ruled that the twins could be separated and, ultimately, that Mary's life could be let go for the sake of saving Jodie. One plea made in this case was that the doctors were "coming to Jodie's defence and removing her from the threat of fatal harm to her presented by Mary's draining her life blood" ([1], paragraph 70). The case heard that it was better, therefore, to save one life, than to have both lives lost. In this sense, the case erred on the side of life, rather than death, and allowed the twins to be separated. What is more, even in this case where a "bellicose" relation may not readily be inferred, the court was able to articulate the relation between Jodie and Mary in the context of a curious friend/enemy distinction whereby Jodie suffered by virtue of the "threat of the other"—a fear of her twin "draining her."

From this discussion, there appears to be a foundational fear at stake here in the demarcation of self from other, and the necessary role of law in safeguarding us from one another. This is reflected through legal decisions that ensure the universality of law and its necessary protection of life. In sum, the concern is that opening up law to the possibility of death by another also dissolves the ordinary relation between sovereignty and protection, and protection and obedience. The reason of the strongest, then, is alleged to protect us, even in its violent, prosthetic state.

5. Solitude and Self-Protection

As expressed above, absolute accounts of sovereignty performed through reason of the strongest present us with an interpretation of sovereignty that secures us from threat of death at the hands of the other. Moreover, these cases seem to illustrate the problem of a sovereign logic that supposes, as we were reminded earlier via Schmitt, that the friend/enemy distinction permeates to the level of the liberal individual, whose right to self-determination and freedom is only granted so long as this said individual does not transgress the social contract and infringe upon another's liberty. On this account, we might therefore say that we are obedient to a sovereign order because it protects us, or "immunizes" us, from the threat we are immanently exposed to in the state of nature; hence, death at the hands of the other. Moreover, it continues to immunize us from this threat even under a sovereign arrangement of power, whereby the other must still be kept at arm's length through liberal concepts that "individualize us." Even in the case of the newborn twins, which might typically be considered a picture of "innocence," we see the language of the wolf framed as the desire for individual immunity: we are left with the sad image of the "parasitic" baby, Mary, articulated as a "threat" to her sister, Jodie, whom she was "draining of blood."

Esposito [7,8] explores the notion of individualization and immunization under liberal sovereignty. He argues that liberalism grants us freedom under sovereignty, but describes this as a very limited view of freedom because it grants us a "freedom from" the other. In his words, we are free from "communal obligation." This communal obligation is akin to what we experience in a state of nature when we do not have any legal borders around us to protect us from one another. Sovereignty grants us this protection, yet in doing so it both brings us together as a totality in the form of the "people," and simultaneously divides us as individual "persons." As a result, we are each individually "immunized" as "liberal" sovereign subjects and protected from this "community" of "others." As Esposito recalls, "that which everyone fears in the *munus*...is the violent loss of borders, which awarding identity to

him, ensures his subsistence” ([15], p. 8). Arguably, this is a similar point articulated by Hannah Arendt (1968) some years earlier. In our desire to be free, she argues that we lose our capacity to be free. Through resorting to the “I-Will” as she termed it, or through one’s desire to withdraw from community into oneself, as Esposito imagines, we are free from others, but not free “with” ([16], pp. 160–161).

Accordingly, civil society under the sovereignty Derrida describes is equated with freedom understood in a liberal sense in which we are free to have property that separates us from one another, that permeates to the level of the body: we are proprietors of ourselves and our bodies which draws a physical boundary between us and others, whereby we are “free” to live with minimal interference. This has two key effects. First, it presents a problem when we need to permeate this immunity paradigm. Thus, where immunity is a feature of state sovereignty, the state makes us believe that it is freeing us from fear by dividing us from others who are “wolves to us.” The friend/enemy distinction inherent in the state of nature whereby everyone was one’s foe is not eradicated, but is replicated under sovereignty. Arguably, this comes to the fore in right to die cases because this logic of sovereignty that replicates bellicose relations means that law must operate in a way that alleges to protect us from the other, even when we require their help to end our lives compassionately. Second, although sovereignty in its liberal variation appears to grant us the right to sovereign self-determination, this right is dissolved when it comes up against the sovereignty of the state. Such is apparent in cases where an individual challenges the law that prevents him or her from acting in the name of his or her own sovereignty. In Nicklinson’s case, this came to the fore when his individual sovereign desire to die was renounced. Law and state sovereignty respects individual liberal sovereignty—hence the right to self-protection and thereby, to some degree, the right to self-determination, or *autos*—only if this autonomy does not challenge the fundamental operation of sovereignty itself. Where right-to-die cases present a threat to sovereignty, potentially revealing its deconstructability, sovereignty must perpetuate itself as absolute:

‘There is not SOVEREIGNTY or THE sovereign’, declares Derrida; ‘There is not THE beast and THE sovereign. There are different and sometimes antagonistic forms of sovereignty, and it is always in the name of one that one attacks the other ([6], p. 76).

In attacking the liberal sovereign subject who threatens its absolute appearance, not only does sovereignty divide us from others, but also, arguably, it divides us from ourselves. If sovereignty is equated with “ipseity” or “self sameness”—hence the idea of being “autonomous”—it must ensure that its own authority, or ipseity is not threatened. Through a performance of indivisibility, state sovereignty is able to take on the role of the Agambian sovereign, as s/he who has the ability to reduce the individual to a divisible state, dissolving his/her sovereignty or ipseity. Returning to Agamben, in this case, it appears we witness an example of the liberal individual sovereign’s divisibility in the form of a reversal of *zoe* and *bios*. Through silent domination, state sovereignty re-divides the individual such as Nicklinson into *bios* and *zoe*: the body of the subject is politicized (made *bios*) in as much as it is kept alive against its wishes, reifying the absolute truth and structure of the sovereign order. And, in this politicization of the body and the refusal to allow the individual to die by the hands of an other without immunity, the desiring “will” of the subject is discarded as “bare life” or *zoe*, in Agamben’s terms, in the sense that the individual’s sovereignty over its life and death—its self-determination—is

renounced by the dominant sovereign. Turning to Esposito's (2012) account of personhood, whereby the "person" is only thus if he "masters his animal part" ([17], p. 22), we see how, in the right-to-die cases, the individual who challenges the state sovereign ipseity is necessarily divided and stripped of his or her sovereignty and self-determination. Individuals appealing for the right to die present an interesting point of tension because they are caught in what Esposito calls a "conceptual tangle" of sovereignty whereby they renounce the very thing that also gives them the right to self-determination. Personhood, after all, only exists as a *dispositif* on the basis that there is a state sovereign, and state sovereignty, *vice versa*, only exists because it was "universally willed" by a collective group that could become "persons" under its authority ([17], pp. 86–87). In the name of a universal subject (the people) who rationally will the sovereign protection in order to "keep the wolves at bay," the individual who desires death at the hands of another is stripped of their personhood, made "subject" only with recourse to their animalistic nature—as a vulnerable "body," a "precarious life" [18]. As Derrida notes, "The concept of sovereignty will always imply the possibility of this positionality, this thesis, this self-thesis, this autoposition of him who posits or posits himself as *ipse, the (self)-same, oneself*" ([6], p. 67). The fabulous nature of this self-sameness, this ipseity, of the liberal "sovereign" subject, in this case is exposed. The subject is no longer self-same, indivisible, but divided through this reference to the *dispositif* of man as soul and animal. If one cannot "reason" sovereignly—hence, if one cannot "choose" the right to life, which is universally willed—one is "reduced" to the status of animal, because one's "sovereignty" can no longer be self-same. While a push for individual self-determination is by no means an adequate resolution for this problematic, since after all it replaces one kind of sovereignty or mastery with another, the right-to-die cases do point to a paradoxical logic of sovereignty and present a different kind of deconstructive moment. Appealing to the right to die is therefore not necessarily a potential deconstructive gesture because of its appeal to self-determination, but because of how it potentially allows us to move toward a certain being-with the other, or excessive understanding of sovereignty.

6. Conclusion: Excessive Sovereigns

If sovereignty is found to be groundless, it is also excessive according to Derrida. This discussion of the performance of sovereign indivisibility illustrates the necessary relation between sovereignty and unconditionality. In presenting the case of Nicklinson and the right to die, this essay has explored how sovereignty appeals to several universalizing qualities to sustain itself. It necessarily posits a universal essence of man as wolf to man, whereby it can then legitimate its allegedly "benevolent" role as a guarantor of life. This serves, as I have argued, to continue to divide us from one another, which ensures we are not a threat to the state sovereign. In addition, sovereignty appeals to other universals such as the sanctity of life and the necessary universalization of law that is "democratic." These are "necessary" deferrals because they permit a silent decision, and therefore preclude the need for a "decision" that is overtly "forceful." Such deferrals allow sovereignty's violent—indeed "rogue"—foundations to slip by. Furthermore, when an individual continues to challenge sovereignty, he or she can further be sanctioned through another, "internal" division, that deconstructs the sovereignty of a liberal individual to prevent a threat to a state sovereign order. This goes some way to explain why right-to-die cases have failed on appeal in UK law to date.

All is not lost, however. As Derrida posits, sovereignty is entirely deconstructable, and, as this paper has explored, right-to-die cases provide some insight into the shaky foundations that sustain sovereign performances of indivisibility. Arguably, when sovereignty must appeal to something beyond itself, which it inevitably must—as indicated by those universals expressed above—it must also “exceed” itself. This excess may be violent and destructive, yet can also create openings. Therefore, this excess might be thought as “autoimmune” [19]. Autoimmunity might be read as the idea that sovereignty contains within it the conditions of its own potential and also its own demise. Thus, sovereignty might sometimes make violent decisions that foreclose possibilities, but there always exists the possibility that an opening will come, even through this very closure. Two examples seem to be operationalized in the case of the individual who desires death. First, the construction of the individual as a liberal sovereign subject contains this autoimmune feature. Liberal categories such as personhood, property, and rights over one’s body allow the subject to be protected by law (which is not universally a “bad” thing because, not only can immunization in many instances be useful, but quite often legal protection is desirable). However, in granting this self-protection, liberal individualism can also be the condition of its own demise. In the case where an individual needs another to help him or her die, the immunizing feature of sovereignty works against itself, attacking itself and preventing the individual from exhibiting their own self-protection, where “protection” might be better understood as an ending of suffering and of life. Second, on a broader scale, the autoimmune condition of sovereignty might be considered parallel to Derrida’s hyperbolic ethics of democracy, hospitality, and gift-giving thought both conditionally and unconditionally. Liberty, like other unconditionals such as hospitality and gift-giving, is an “absolute” that conditions and thereby makes possible the contextual materialization of instances that appear as liberty. This materialization is only a performance as such, since liberty is always reaching beyond itself toward the unconditional, or the impossible possibility that makes such surfacing possible. Liberty, therefore, should not be thought only as a universal category that protects us from the other and renders us under a sovereign order to be free from the other but, rather, we might suppose a hyperbolic ethic to imagine liberty in excess of this self-sameness, to imagine it otherwise and more openly—more responsibly. In this case, rather than seeing the unit of the liberal individual as immunized from the other, we might think of how we can open up this “subject” to exceed “self-sameness.”

In short, autoimmunity can be violent and destructive, as much as it can also create openness, indeterminacy, and ways of being that exceed the *autos* or the self-sameness—the absolute sovereign. Derrida presents autoimmunity as a movement or iteration that might be better thought as a broad instance of historical patterns of shifting ways of becoming. For example, autoimmunity in this regard is understood as iterations of change, as modes of closure and openness. Like the potential creativity in destruction, autoimmunity presents opportunities for openness in such violent attempts at closure (e.g., closure of the “immunized individual” or closure in terms of the “sovereign decision”). As indicated, one measure of openness might be to try and think the right to die through more open means beyond this essential link to fear and murder. Could we consider the right to die a compassionate gift, or a gift of death?

As I close this paper, I want to also create an opening of sorts by gesturing to where Derrida takes us in the second volume of *The Beast and the Sovereign*. In the eighth session, Derrida speaks of Heidegger’s understanding of transcendence being “a correlate of the power of the as such.” Moreover,

transcendence, Derrida writes, is “shared in Mitsein, in the common opening to beings” ([20], p. 227). In these reflections on Heidegger, Derrida, it seems, identifies something worth retaining. This value appears to lie in the possibility of the relation between transcendence and the as such, between the unconditional being-with, and the being-in-solitude, or conditional sovereignty. In our musings over liberty, the impossible possibility of sovereignty, and the capacity to exceed and to be more open, could we imagine a variation of the Heideggerian Mitsein-to-come? A Derridean openness to otherness? As Derrida writes,

sovereignty does not exist; it is always in the process of positing itself by refuting itself, by denying or disavowing itself; it is always in the process of autoimmunising itself, of betraying itself by betraying the democracy that nonetheless can never do without it ([12], p. 101).

This democracy to come, the possibility of being-with, might help us think autoimmunity as the changing patterns of sovereignty, and the in-flux ways of always striving for openings within the closures sovereignty necessarily demands. Such an opening might be read as an openness to death, an openness to the other, and thinking the cases of the right to die as compassionate moments of giving.

Acknowledgments

I would like to thank George Pavlich for reading Derrida with me and for his generous feedback on earlier versions of this work. Extended thanks to the anonymous reviewers for their thoughtful comments. Any faults in this piece are entirely my own.

References and Notes

1. *Nicklinson v. Ministry of Justice*; 2012. Available online: <http://www.judiciary.gov.uk/Resources/JCO/Documents/Judgments/nicklinson-judgment-16082012.pdf> (accessed on 3 March 2012)
2. *Pretty v. United Kingdom*; Application no. 2346/02; Council of Europe: European Court of Human Rights, 2002. Available online: <http://www.unhcr.org/refworld/docid/4dae1682.html> (accessed on 3 March 2012).
3. Hanafin, P. *Rights of Passage: Law and the Biopolitics of Dying*; Birkbeck ePrints: London, UK, 2009. Available online: <http://eprints.bbk.ac.uk/820> (accessed on 5th August 2012).
4. Foucault, M. *Security, Territory, Population: Lectures at the College de France, 1977–1978*; Burchell, G., Trans.; Palgrave Macmillan: New York, NY, USA, 2007.
5. Foucault, M., *The Birth of Biopolitics: Lectures at the College de France, 1978–1979*; Burchell, G., Trans.; Palgrave Macmillan: New York, NY, USA, 2008.
6. Derrida, J. *The Beast and the Sovereign*; Bennington, G., Trans.; The University of Chicago Press: Chicago, CA, USA, 2009; Volume I.
7. Esposito, R. *Bios: Biopolitics and Philosophy*; Campbell, T., Trans.; University of Minnesota Press: Minnesota, MN, USA, 2008.
8. Esposito, R. *Immunitas: The Protection and Negation of Life*; Campbell, T., Trans.; Polity Press: Cambridge, UK, 2010.
9. Fitzpatrick, P. Dominions: Law, Literature and The Right to Death. *J. Law Soc.* **2004**, *31*, 142–148.

10. Foucault, M. *Society Must be Defended: Lectures at the Collège de France, 1975–1976*; Macey, D., Trans.; Penguin Books: London, UK, 2003.
11. Legislation.gov.uk. Suicide Act 1961. CHAPTER 60 9 and 10 Eliz 2, 1961. Available online: <http://www.legislation.gov.uk/ukpga/Eliz2/9–10/60> (accessed on 1 August 2012).
12. Derrida, J. *Rogues: Two Essays on Reason*; Brault, P.A., Naas, M., Trans.; Stanford University Press: Stanford, CA, USA, 2005.
13. Foucault, M. An Introduction. In *The History of Sexuality*; Random House: New York, NY, USA, 1990; Volume 1.
14. Agamben, G.; Heller-Roazen, D. *Homo Sacer: Sovereign Power and Bare Life*; Stanford University Press: Stanford, CA, USA, 1998.
15. Esposito, R. *Communitas: The Origin and Destiny of Community*; Campbell, T., Trans.; Stanford University Press: Stanford, CA, USA, 2009.
16. Arendt, H. *Between Past and Future*; Viking Press: New York, NY, USA, 1968.
17. Esposito, R. *Third Person: Politics of Life and Philosophy of the Impersonal*; Polity Press: Cambridge, UK, 2012.
18. Butler, J. *Precarious Life: The Powers of Mourning and Violence*; Verso: London, UK, 2004.
19. Derrida, J. Autoimmunity: Real and Symbolic Suicides: A Dialogue with Jacques Derrida. In *Philosophy in a Time of Terror: Dialogues with Jürgen Habermas and Jacques Derrida*; Borradori, G., Ed.; University of Chicago Press: Chicago, IL, USA, 2003; pp. 85–136.
20. Derrida, J. *The Beast and the Sovereign*; Bennington, G., Trans.; The University of Chicago Press: Chicago, IL, USA, 2011; Volume II.

© 2013 by the authors; licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution license (<http://creativecommons.org/licenses/by/3.0/>).