

## TO WHAT EXTENT SHOULD WE EXTEND HUMAN RIGHTS TO ZOMBIES?

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### ABSTRACT

*The concept of emancipation indicates that someone can be trapped within their own body whilst their still functions as if they were normal. Zombies have a similar concept in that they are emancipated beings that suffer at the hands of society and the government and are annihilated at first sight.*

*Through the use of two historical and contemporary diseases, this paper will attempt to draw a comparison of how society waited for a cure for historical and contemporary conditions and did not attempt to euthanise the patients who were suffering, despite the fact that they exhibited some of the behaviour we commonly associate with zombies. This paper will also draw parallels between the Human Rights that protect us whilst we are alive and how they should extend to a zombie when essentially, they are simply an emancipated being who is worthy of living their life to the fullest and hope should still be kept for a cure.*

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## I TO WHAT EXTENT SHOULD WE EXTEND HUMAN RIGHTS TO ZOMBIES?

*They would be conscious and aware - yet not fully awake; they would sit motionless and speechless all day in their chairs, totally lacking energy, impetus, initiative, motive, appetite, affect, or desire; they registered what went on about them without active attention, and with profound indifference. They neither conveyed nor felt the feeling of life; they were as insubstantial as ghosts, and as passive as zombies...*<sup>1</sup>

*As Sicknes is the greatest misery, so the greatest misery of sicknes, is solitude ... Solitude is a torment which is not threatened in hell itself.*<sup>2</sup>

### A Introduction

Societies psychological response to the zombie apocalypse has been depicted in Hollywood films from as early as the 1930's. As an audience, we watch on as our heroes delve deep into their psyche and face some of the most fearsome creatures. Creatures that have no other ambition than to roam the land and eat anything that lives and force the remainder of society into hiding, running and overall, surviving.

However, where our heroes' natural adrenalin response is to take whatever blunt object and destroy the brain of this flesh-eating monster, you can guarantee that the last thing that is on their minds would be whether these predatory creatures were once in fact, human beings and in fact, whether zombieism has similarities to some of the well-known illnesses that have appeared during our time.

As human beings in many of the worlds countries, we can freely go about our days without being in fear of oppression and terror from our government or higher power, however if the apocalypse were to come and the world was roaming with the walking dead, could you argue that the victims of zombieism have become emancipated within their own bodies. You could argue that human rights are extinguished when one loses control over their own mind and attempts to chew their neighbours arm off, but are they?

This paper will attempt to explore the possibility of whether a zombie is merely an emancipated human being; a victim of their own mind whilst their body is free to do as it's instinct pleases. Further, this paper will explore whether the human rights that protect living humans from any oppression and emancipation of the government, also extend to those who are effectively, no longer living.

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<sup>1</sup> Oliver Sacks, *Awakenings* (Duckworth & Co 2<sup>nd</sup> ed ,1973).

<sup>2</sup> John Donne, *Devotions V Meditation*.

## II WHAT IS THE CONCEPT OF HUMAN LIFE?

There are several concepts of what encapsulates a ‘human life.’ It is the age-old ethical debate that still divides theorists and members of society when attempting to define what human life is and where and when it begins.

Giorgio Agamben is one of the most important contemporary theorists on the theory of bare life. His contribution and theories have allowed society to revise the Foucauldian theory of biopower<sup>3</sup> and therefore to rethink and re-examine the political contradictions of modernity.

Agamben’s definition of bare life is apparent in his work *Homo Sacer*<sup>4</sup> that reworks Aristotle’s and Arendt’s distinctions between biological existence and the political life of speech and action as well as the differences between *mere life* and *good life*.<sup>5</sup>

For Agamben, bare life constitutes the original but ‘concealed nucleus’ of Western biopolitics in so far as its exclusion founds the political realm.<sup>6</sup> Agamben believes that bare life is already included within the political realm in the form of an exclusion<sup>7</sup> and also in the form of unlimited exposure to violation.<sup>8</sup> Thus the most fundamental categories of Western politics are not the social contract, friend or enemy but instead, bare life and sovereign power.<sup>9</sup>

Agamben’s theory was essentially straight-forward in that there were distinguishing factors between what determines a ‘good life’ from a ‘bad life.’ His theory was similar to Karl Binding.

Karl Binding discussed the concept of life that is unworthy of being lived.<sup>10</sup> Although Binding was criticised for his involvement in the Second World War and his destruction of human life, the Nazi argument was for Binding to provide ethical consideration for those he had killed<sup>11</sup> in literary texts.<sup>12</sup>

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<sup>3</sup> *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen trans, Stanford University Press, 1998) [trans of *Homo sacer. Il potere sovrano e la nuda vita* (first published 1990)] \

<sup>4</sup> Ibid.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> The ‘polis.’

<sup>8</sup> Above n1.

<sup>9</sup> *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen trans, Stanford University Press, 1998) [trans of *Homo sacer. Il potere sovrano e la nuda vita* (first published 1990)]

<sup>10</sup> Karl Binding and Alfred Hoche, *Allowing the Destruction of Life Unworthy of Life: Its measure and its form* (Robert Sassone trans, Sassone, 1975) [trans of *Die Freigabe der Vernichtung lebensunwerten Lebens. Ihr Maß und ihre Form* (first published 1920)]

<sup>11</sup> Ibid 141.

<sup>12</sup> Ibid.

*The Destruction of Unworthy Life*<sup>13</sup> argues that criminal liability may not be extended to suicide but it should be extended to the killing of third parties,<sup>14</sup> however there are some examples of life that arguably no longer worth living and therefore, should be disposed of<sup>15</sup> and they are creating a burden on society. This burden was the arguable element that differentiates Agamben and Binding in the sense that, Binding would say someone who was suffering but are still 'alive' in the context that they could speak for themselves, should be disposed of because they are a burden on society. Whereas Amagaben would say that until those people stop being able to speak for themselves and live a 'good life' then they should not be killed.

Using both Binding and Agamben's theory, we can deduce that the two theorists have differences between a life that is 'worth living' and a life that is not. So, in a medical context both Binding and Agamben would determine that someone who lacks the ability to speak or make decisions for themselves are no longer living but it is the scope of the suffering that divides the theorists. Essentially these people have become emancipated from their own bodies and are slaves to their minds or to others.

Zombies aren't necessarily devoid of life or have a bad life, so little is known about the disease that particularly during the early phases of the apocalypse saying that that a zombie will have a life that is unworthy of living without knowing the full extent of the disease would prove to be unfair on the zombie.

### **III DEVOID OF HUMAN LIFE? A STUDY OF TWO CONDITIONS.**

There is historical preconception for large number of people who are affected by a disease to be dealt with 'en masse' but not in the sense of, should they be exhibiting strange behaviours, to kill them. 1910 saw the onset of *Encephalitis Lethargica* in which Oliver Sacks described the patients as resembling and having 'zombie like behaviour.'<sup>16</sup>

Locked-in syndrome also sees similar symptoms where patients are emancipated by their own minds and trapped in their bodies, sometimes with little hope of recovery.

Both examples, contemporary and historical show that societies preconception to handle mass cases of a disease is not to obliterate them as Hollywood depicts you would

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<sup>13</sup> Ibid.

<sup>14</sup> *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen trans, Stanford University Press, 1998) [trans of *Homo sacer. Il potere sovrano e la nuda vita* (first published 1990)]

<sup>15</sup> Ibid.

<sup>16</sup> Oliver Sacks, *Awakenings* (Duckworth & Co, 2<sup>nd</sup> ed, 1973) 17.

do a zombie, but to wait until a cure is found or the patient dies of symptoms relating to the disease.

### A *Encephalitis Lethargica.*

Oliver Sacks was a British neurologist who spent most of his working life in the United States of America. His research and case studies into the human brain led him to be a bestselling author about his theories surrounding the brain and his research and opinion are still widely turned to in the 21<sup>st</sup> century.

During 1918-1928 an epidemic swept the world where patients had begun to complain of symptoms similar to that of the common cold. However, as the disease progressed unlike the common cold, patients begun exhibiting neck rigidity, double vision, delayed physical and mental response and eventually, exhibited behavioural changes, which included psychosis and psychotic episodes. This disease became known as *Encephalitis Lethargica*<sup>17</sup> or ‘the sleepy sickness.’<sup>18</sup>

The term *Encephalitis Lethargica* was given the name due to the presenting symptoms of tiredness, which were the result of the inflammation of the brain that inhibited the patient from waking up.<sup>19</sup> Such a melancholy definition was appropriate since the most common cause of death for victims of *Encephalitis Lethargica* was that they would die of either starvation or respiratory failure.<sup>20</sup> Just as quickly as the disease became known, the disease went and an outbreak has stayed dormant for the last century.

During his time working with the sufferers of the disease, Sacks deduced a number of findings about the relationship between the disease and the cognitive behaviour exhibited by the patients. Although Sacks acknowledged that every case of *Encephalitis Lethargica* varied from patient to patient,<sup>21</sup> the most common symptom amongst patients was the amount of time they spent asleep<sup>22</sup> or in a ‘coma like state,’<sup>23</sup> Often patients would also exhibit strange or unusual symptoms and mannerisms that were outside their normal personality traits, which included random ‘fits’ and ‘flails’ of their extremities.<sup>24</sup> There is even a case report of a patient of *Encephalitis Lethargica* turning and attempting to bite the nurse who was helping the patient.

Although patients seemed to make a full recovery, there were ongoing issues with later developments of Parkinsonism and other neurological or psychiatric illnesses. Often

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<sup>17</sup> Ibid.

<sup>18</sup> Above n 14.

<sup>19</sup> Oliver Sacks, *Awakenings* (Duckworth & Co, 2<sup>nd</sup> ed ,1973) 19.

<sup>20</sup> Ibid.

<sup>21</sup> Oliver Sacks, *Awakenings* (Duckworth & Co, 2<sup>nd</sup> ed ,1973) 21.

<sup>22</sup> Thus where the name the ‘sleepy sickness’ came from. Above n 19.

<sup>23</sup> Oliver Sacks, *Awakenings* (Duckworth & Co, 2<sup>nd</sup> ed ,1973).

<sup>24</sup> Oliver Sacks, *Awakenings* (Duckworth & Co, 2<sup>nd</sup> ed ,1973) 23.

these side effects would develop years after the patients had recovered and been living normally and had no symptoms or even trace that they had had *Encephalitis Lethargica*.

During the time that *Encephalitis Lethargica* ran rampant throughout the world, the patients were treated exactly as anyone else suffering a debilitating illness in the sense that they were cared for by doctors and nurses who were solely devoted to helping the patients live comfortably<sup>25</sup> and attempting to find a cure.

At no point during Sack's time working with the disease and its victims were there reports of someone being humanely euthanised or killed despite their suffering.<sup>26</sup> Instead the patients were kept alive in order to study the disease and the hopes that they will eventually recover which, as we know, some did. Although in Agamben's eyes the patients weren't living a 'good life,' medical professionals were willing to wait until the patients either passed away or a cure was found.

### **B      *Locked-In Syndrome.***

Another contemporary example of zombie like behaviour is exhibited in the condition locked-in syndrome.

Locked-in syndrome, or pseudochoama, is the syndrome where a persons state of wakefulness and awareness with quadriplegia and paralysis of the lower cranial nerves, resulting in inability to show facial expression, move, speak, or communicate, except by coded eye movements.<sup>27</sup> Typically it results from a pontine haemorrhage or infarct that causes quadriplegia and disrupts and damages the lower cranial nerves and the centres that control horizontal gaze.<sup>28</sup>

Patients have full cognitive awareness and function with normal sleep-wake cycles, can see and hear but have the inability to move their lower face, chew, swallow, speak, breathe on their own, move their limbs or move their eyes laterally.<sup>29</sup>

Each patient is essentially trapped in their own body without ways of surviving on their own without the assistance of respiratory machines and the aid of modern medicine. Although the prognosis of locked-in syndrome is relatively good, it is dependent on the type of condition that resulted in the locked-in syndrome in the first place.<sup>30</sup> Supportive

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<sup>25</sup> Ibid.

<sup>26</sup> Above n 21.

<sup>27</sup> Kenneth Maiese, *Locked-in Syndrome* (July 2015) MSD Manual: Professional Version <<http://www.msmanuals.com/en-au/professional/neurologic-disorders/coma-and-impaired-consciousness/locked-in-syndrome>>.

<sup>28</sup> Ibid.

<sup>29</sup> Above n 21.

<sup>30</sup> For example, certain types of cancers can be terminal and yet naturally we do not euthanise the patients no matter their suffering as the law does not extend to these 'mercy killings'.

care and treatment to prevent pressure ulcers are used to treat patients and the rest is usually a matter of waiting until the condition of the patient improves.<sup>31</sup>

Although the scientific term *pseudochoma* indicates that the patient is in a coma or coma like state, differences have to be noted however that the two conditions are drastically different in that, some people who are in coma like states may never recover<sup>32</sup> whereas those with locked-in syndrome may recover.<sup>33</sup>

### III WHAT IS EMANCIPATION IN THE CONTEXT OF THE ZOMBIE APOCALYPSE?

The dictionary<sup>34</sup> definition of emancipation is:

*The fact or process of being set free from legal, social, or political restrictions; liberation.*<sup>35</sup>

We know from case law<sup>36</sup> and legislation<sup>37</sup> that where someone exhibits a loss of capacity, you simply cannot make decisions without a certain type of power of attorney<sup>38</sup> on behalf of the principal<sup>39</sup> and although someone may be considered clinically dead, to remove their life support without that power<sup>40</sup> could constitute murder.

However, where someone's entire existence is solely based on the need to feed on whatever they can find, human or animal, one could argue that their life is not worth living, certainly not in the context that normal humans live their life and the threat they place on society is too deadly to the rest of the world. Essentially, they are slaves to the world and to their own minds.

The concept of someone being 'set free' from something denotes that particular *someone* is no longer restrained by that which oppressed him or her, whether that is social or political freedom or the rights of freedom from the suffering of their own illness.

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<sup>31</sup> Above n 21.

<sup>32</sup> Ibid

<sup>33</sup> Above n 21.

<sup>34</sup> George W Turner, *The Australian Concise Oxford Dictionary* (Oxford University Press, 7<sup>th</sup> ed, 1987) 336.

<sup>35</sup> Ibid.

<sup>36</sup> *Powell v Powell & Anor* (2002) WASC 105.

<sup>37</sup> Such as the *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc S/RES A/810 (10 December 1948).

<sup>38</sup> Such as the *Powers of Attorney Act 2006* (ACT).

<sup>39</sup> Ibid.

<sup>40</sup> Above n 1.

A zombie is effectively a slave to his or her own mind. Their bodies are still functioning but their minds are forcing their bodies to do things one wouldn't normally do.<sup>41</sup> A zombie has no higher functioning or reasoning, they have no need for material objects such as homes or furniture and they are essentially a 'shell' of their former selves. They do not care for their loved ones and instead see those who attempt to stop them as prey.<sup>42</sup>

Normally with emancipation there are a series of rights that protect humans from slavery. Where someone is a slave to himself or herself however it is arguable that the government will still protect them when they are no longer humans.

In the apocalypse, the world between the *Mosso* phase and the *Prestissimo* phase has lost all functionality and one can imagine there is no government control or power helping the survivors or protecting them from the walking dead. Further, as we know from some of Hollywood's depictions, sometimes the government turns out to be as skewed as the rest of the world and whilst a 'safe place' is offered, often that safe place turns out to be the most crooked of them all.<sup>43</sup> So not only are survivors emancipated from the very rights that exist to protect them from the government, they are also emancipated from the rest of society who are trying to survive or attempting to eat one another.

So, whilst we can deduct from this argument that the survivors are emancipated from both the government and uninfected human beings, can the same be said for the zombies? It could be argued that a zombie is merely a human, who has come back to 'life' with the same body but a diminished mind however no rights seek to protect zombies from the government or the society who simply seek to kill them.

#### IV AT WHAT CONDITION ARE RIGHTS EXTINGUISHED?

Human rights are often viewed as a means of securing emancipation from suffering, oppression and cruelty.<sup>44</sup> Many scholars, academics, lawyers and judges alike have attempted to hone in on a single definition, or series of definitions of what encompasses 'human rights.'

A simple Google search on 'human rights' brings up thousands of hits ranging from case law to theory-derived research but still as part of the human race, we are unable to

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<sup>41</sup> See for example any zombie movie where a zombie is depicted tearing something apart with their bare hands.

<sup>42</sup> *The Last of Us*, 2014. USA: Naughty Dog Entertainment, Video Game.

<sup>43</sup> *28 Days Later...* 2002, United Kingdom: Juan Carlos Fresnadillo, DVD.

<sup>44</sup> James Souter 'Emancipation and Domination: Human Rights and Power Relations' (2008) *In-Spire Journal of Law, Politics and Societies* 3.2 141.



define what exactly a ‘human right’ envelops and what laws there are to protect those who have ‘lost’ their human rights.

A common consensus and reoccurring theme for those who have attempted to define, precisely what human rights encompass and that unify these scholars and academics, is that these rights are there to protect us from an abuse of power<sup>45</sup> and recognition of these rights will aid in curbing those who abuse that power.<sup>46</sup>

Unfortunately, history has shown time and time again the atrocities of an abuse of power can have on a society, culture or race.<sup>47</sup> Namely I note the ‘never again’<sup>48</sup> argument that was promoted after World War II. Jewish men and women feared that someone would rise to replace Adolph Hitler and that the oppression would continue.

Resulting from these power abuses, there has been greater pressure internationally for abusive regimes to cease, both from non-governmental organisations and human rights institutions, to stand for change with the overarching view that human rights serve as a practical ability to reduce suffering.<sup>49</sup>

Australia signed the *Universal Declaration on Human Rights*<sup>50</sup> on 10 December 1948<sup>51</sup> and played a founding role as one of the eight nations that helped draft the *Declaration*.<sup>52</sup>

The *Declaration*<sup>53</sup> seeks to exist to protect the humans of the world as mentioned previously and the *Declaration*<sup>54</sup> contains 30 articles that relate to different concepts that protect society in various ways. Some of these rights protect humans from slavery,<sup>55</sup> subjection to torture,<sup>56</sup> discrimination due to race, gender, language or political opinion<sup>57</sup> and the recognition of a person before the law.<sup>58</sup>

With relation, specifically to Article 4<sup>59</sup> the *Declaration* states:

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<sup>45</sup> Ibid 142.

<sup>46</sup> Ibid.

<sup>47</sup> Above n 1.

<sup>48</sup> Ibid

<sup>49</sup> James Souter ‘Emancipation and Domination: Human Rights and Power Relations’ (2008) *In-Spire Journal of Law, Politics and Societies* 3.2 142.

<sup>50</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc S/RES A/810 (10 December 1948).

<sup>51</sup> Ibid

<sup>52</sup> Above n 10.

<sup>53</sup> *Universal Declaration of Human Rights*, GA Res 217A (III), UN GAOR, 3<sup>rd</sup> sess, 183<sup>rd</sup> plen mtg, UN Doc S/RES A/810 (10 December 1948).

<sup>54</sup> Ibid.

<sup>55</sup> Ibid Article 4.

<sup>56</sup> Ibid Article 5.

<sup>57</sup> Ibid Article Article 2.

<sup>58</sup> Ibid Article Article 6.

<sup>59</sup> Ibid Article Article 4.

*'No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.'*<sup>60</sup>

One could contend from Article 4<sup>61</sup> that 'slavery' incorporates the unlawful confinement and forced work of someone as it implies. However, 'slavery' could also encompass the suffering of someone who has been permanently deprived of their liberty due to an illness or trauma and is therefore a slave of their own mind.<sup>62</sup> Someone who has been reduced to the barest of lives and therefore is devoid of living a 'good life.'<sup>63</sup>

We know that zombies effectively fit this definition as they have no control of their urges and instincts specifically where their body could be argued to be working against its will. A human being is therefore sovereign over his or her own existence<sup>64</sup> so a zombie who no longer has the sovereign power over their existence, is not considered human.

Arguably a zombie is no longer protected from government power under the *Universal Declaration of Human Rights*<sup>65</sup> because they are no longer, essentially, a human being. Although the *Universal Declaration of Human Rights*<sup>66</sup> does not explicitly define the definition of 'human' common sense would prevail about what encompasses the criteria of a human being. That being that a single human occupies a place on earth, lives and breathes and seeks comfort in their everyday life.

A zombie has none of these traits other than the occupation of a place on earth, they do not breathe and do not hold any 'economic value' to society and as mentioned their only desire is their predatory instinct. Although zombies may occupy a place on earth, they are neither living nor dead.

Agamben argues that they have 'lost their voice' and the right to a good life and restricted to the barest of the bare meaning that they should be 'removed' humanely from society. Binding would deduce the same reasoning but the fact remains that the possibility of a cure to zombieism has not been discovered and therefore, zombies are still protected by human rights.

## V IS ZOMBIEISM LESS OR EQUAL TO DEATH?

Hollywood has portrayed zombies in countless different ways, from zombies whose mere existence is solely to eat and aren't overly intelligent, to zombies that use complex

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<sup>60</sup> Ibid Article Article 4.

<sup>61</sup> Above n 20.

<sup>62</sup> Above n 42.

<sup>63</sup> *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen trans, Stanford University Press, 1998) [trans of *Homo sacer. Il potere sovrano e la nuda vita* (first published 1990)]

<sup>64</sup> Ibid 136.

<sup>65</sup> Above n 48.

<sup>66</sup> Ibid.

problem solving skills to hunt their prey.<sup>67</sup> The commonality between all these depictions and the disease is that it is usually transferred from a bite from an infected. In AMC's *The Walking Dead* the bite was one of the first topics that was discussed once Rick (the main character) had awoken from an induced coma.

*I know how it must sound... But listen. One thing I do know. Don't you get bit. I saw your bandage and that's what I was afraid of.*<sup>68</sup>

Although the physical depiction of zombies may vary, the overarching theme amongst most zombie paraphernalia is that the disease arises out of a change in the brain. This was also discussed in *The Walking Dead* during the first episode where Rick encounters a zombie.<sup>69</sup>

*Bites kill you. The fever burns you out. But then after a while... you come back... They're dead except for something in the brain.*<sup>70</sup>

Effectively a zombie shows no sign of their prior life once they have turned. Their familiarity of people they once associated with or were related to is non-existent and their sole instinct is to survive and a survivor's instinct is to kill them. As the brain is known to be main area that is affected (the central powerhouse of the infection site if you will) when someone is turned, usually a swift blow to the head with some form of gardening tool is the effective enough to kill them.

A zombie is essentially dead, they have no pulse or brain activity and their one predatory instinct is to hunt and kill. Often some are depicted with missing limbs or half of their face due to the (sometimes) years of roaming they have endured, whereas others only have a slight differentiation in their eyes or teeth that show they aren't fully human.<sup>71</sup>

The concept of 'life devoid of value'<sup>72</sup> is considered amongst those who are 'incurably lost' following disease or illness.<sup>73</sup> Arguably Binding says that these lives are a burden on society and financial resources and therefore should be disposed of.<sup>74</sup>

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<sup>67</sup> Max Brooks, *World War Z: An Oral History of the Zombie War*, (Duckworth, 2006) 22.

<sup>68</sup> *The Walking Dead* (Directed by Frank Darabont, AMC, 2010).

<sup>69</sup> Note however, that in *The Walking Dead* the term zombie is never used. Instead, zombies are usually referred to as walkers, lamebrains, biters and creepers just to name a few.

<sup>70</sup> Ibid.

<sup>71</sup> See for example the early depiction of an infected human in *I am Legend*.

<sup>72</sup> *Homo Sacer: Sovereign Power and Bare Life* (Daniel Heller-Roazen trans, Stanford University Press, 1998) [trans of *Homo sacer. Il potere sovrano e la nuda vita* (first published 1990)]

<sup>73</sup> Ibid 138.

<sup>74</sup> Above n 7.

Using Binding's theory there is no denying that a zombie has no economically valuable place in society. Although it has been depicted in some movies<sup>75</sup> in the initial phases of the apocalypse when society has lost control completely, they simply have no place.

Arguably a zombie is neither dead nor living. They have no cognitive function but merely a predatory drive and a desire to survive. Essentially this differentiates them from the living so under Binding's<sup>76</sup> argument, zombieism is less than death and therefore, zombies should be disposed of.

## VI GRANTING ZOMBIES CAPACITY.

A Power of Attorney is a legally binding document that gives a trusted person the authority to act for you and to make legally binding decisions on your behalf<sup>77</sup> where decision-making capacity of the individual concerned has been diminished either wholly or substantially.<sup>78</sup>

There are differences between a general power of attorney<sup>79</sup> and an enduring power of attorney.<sup>80</sup>

A power of attorney with general power<sup>81</sup> can only make decisions about general matters and only while the principal has decision-making capabilities,<sup>82</sup> they cannot make substantive or whole decisions about the principal's wellbeing<sup>83</sup> and the power is revoked where the principal's decision making capabilities are diminished.<sup>84</sup> Whereas an enduring power of attorney<sup>85</sup> can make decisions where the principal has lost their whole or complete decision-making capabilities<sup>86</sup> and this power is not diminished upon the principal's condition diminishing.<sup>87</sup>

There are also provisions for delaying activation of the power of attorney and for activation to only become active when certain requirements are met.<sup>88</sup>

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<sup>75</sup> See for example in *Shaun of the Dead* where once the apocalypse had finished and normalcy had begun to return, many zombies found their place in society either working in a grocery store or simply, providing company to their loved ones.

<sup>76</sup> Above n 7.

<sup>77</sup> Public Trustee and Guardian, *Powers of Attorney* (15 March 2016) Public Trustee and Guardian <<https://www.ptg.act.gov.au/powers-of-attorney>>.

<sup>78</sup> *Powers of Attorney Act 2006* (ACT) s 8-9.

<sup>79</sup> *Ibid* s 7.

<sup>80</sup> *Ibid* s 8.

<sup>81</sup> *Ibid* s 8-9.

<sup>82</sup> *Ibid*.

<sup>83</sup> *Ibid* s 8-9.

<sup>84</sup> *Ibid*.

<sup>85</sup> *Ibid* s 8-9.

<sup>86</sup> *Ibid*.

<sup>87</sup> *Ibid* s 8-9.

<sup>88</sup> *Ibid* s 8.

Finally, if someone does not want to provide someone with the power of attorney duty, whether that is as a general provision<sup>89</sup> or an enduring provision,<sup>90</sup> they can construct a living will<sup>91</sup> which will outline the creators desires should their capabilities to make a decision be diminished.<sup>92</sup> Like the power of attorney<sup>93</sup> it is a legally binding document.

A power of attorney can be made by someone either as an anticipatory step or when someone is suffering and they recognise they are unlikely to get better. The power of attorney must then be delegated to someone who, according to the Act<sup>94</sup> has complete decision-making capabilities.<sup>95</sup> An attorney cannot be someone who has diminished capabilities.<sup>96</sup>

The rights that can be transferred according to *Powers of Attorney Act*<sup>97</sup> under for both a general power of attorney<sup>98</sup> and an enduring power of attorney<sup>99</sup> include any rights relating to property, the principal's affairs,<sup>100</sup> personal care<sup>101</sup> and healthcare.<sup>102</sup>

### A ...So In The Apocalypse?

The concept that someone can appoint a power of attorney should they be turned into a zombie isn't overly farfetched, particularly when examining the concept of those who are declared clinically brain dead.

Drawing parallels between what we know about the treatment of the clinically brain dead such as those with *encephalitis lethargica* and locked in syndrome, one could argue that a zombie has the same rights as, theoretically speaking, the brain dead.

With any disease there is still hope for a cure, as a society we do not simply euthanise someone because they have an incurable cancer because there is still research and hope going towards a cure or something that can slow the progression of the disease. This forms part of the ethical debate surrounding euthanasia that society still shakes its head at.<sup>103</sup>

With a condition such as locked in syndrome, parallels between the two conditions is apparent. Whilst a zombie has lost control of their mind and their body is a victim of

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<sup>89</sup> Ibid s 7.

<sup>90</sup> Ibid s 8.

<sup>91</sup> Ibid s 9.

<sup>92</sup> Ibid s 8-9.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid s 8-9.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid s 7.

<sup>99</sup> Ibid s 8-9.

<sup>100</sup> Ibid s 9(1).

<sup>101</sup> Ibid s 12.

<sup>102</sup> Ibid 12(a).

<sup>103</sup> Australian Human Rights Commission, 'Euthanasia, human rights and the law' (Issues Paper, No Number, Australian Human Rights Commission, May 2016).

their brains needs<sup>104</sup> there is still some functioning within the brain that creates these predatory desires. Similarly, someone with locked in syndrome has no cognitive functioning in their brains and in some cases they are unlikely to ever return to normal.<sup>105</sup> This differentiates from Binding's<sup>106</sup> argument that those who do not contribute to society in any way due to illness and therefore are a burden on the hospitals system should be euthanised.

## VII IS THE CONCEPT OF A ZOMBIE PUBLIC TRUSTEE REALLY THAT FARFETCHED?

The operations and functions of the Public Trustee and Guardian are established by the *Public Trustee and Guardian Act 1985*.<sup>107</sup> The Public Trustee and Guardian is the Chief Executive Officer of that Authority.

A trustee is appointed to someone who is incapable of making a decision for themselves due to mental impairment, age or vulnerability or the person is deceased.<sup>108</sup> A public trustee is usually appointed to write a living Will for someone who can impart their final decisions into a legally binding document that must be honoured upon their death.<sup>109</sup>

The notion that a zombie public trustee could exist isn't overly farfetched when examining what we know about encephalitis lethargica and locked-in syndrome. The rights of the sufferers are protected until such time exists where there is no possibility they will return to full health. As mentioned, there is still too little that is known about how zombieism works and whether there is or will be a cure to warrant simply exterminating everyone suffering the disease.

Essentially, prima facie, anyone who appoints a Will can make provision for their wellbeing once they pass away. Provisions also exist within a Will where a testator can ask to be taken off life support if there is no possibility they will recover from a coma like state or when it can be seen that there is zero brain activity. Although this order shows that if the person is ever in a coma like state, provision has been made for that person to be taken off life support and end their suffering, in a Living Will should the apocalypse come, can someone make a 'do not obliterate' order?

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<sup>104</sup> That being to hunt and kill.

<sup>105</sup> Above n 25.

<sup>106</sup> Karl Binding and Alfred Hoche, *Allowing the Destruction of Life Unworthy of Life: Its measure and its form* (Robert Sassone trans, Sassone, 1975) [trans of *Die Freigabe der Vernichtung lebensunwerten Lebens. Ihr Maß und ihre Form* (first published 1920)]

<sup>107</sup> *Public Trustee and Guardian Act 1985* (ACT).

<sup>108</sup> Ibid.

<sup>109</sup> Above n 104.

So in the apocalypse, the concept that a legally binding document exists and a provision within that documents asks that if the testators mental capability be diminished, they can remove life support it may be argued that that provision also extends to if the testator were turned into a zombie and also to a do not obliterate order.

### **A Conclusion**

Human Rights remain to protect society from the oppression of the government and unlawful murder and torture whether inflicted by the government or by other members of society, however society has developed the notion that this right does not extend to zombies.

There are many differences between a zombie and a human but the rights that protect us as human beings may or may not extend to zombies, however not all rights are extinguished at a zombie state and we should recognise some of those rights.

Drawing on two conditions which exhibited similar conditions to that of a zombie in the neurological prima facie sense, whilst society remains certain that killing them was both unlawful and unethical and that a cure will eventually be found, the same argument may not be able to be extended to a zombie.

Finally, where the concept of Wills and the Public Trustee remains to exist, there should be provision for those who anticipate the zombie apocalypse to have their last wishes, should they turn, to be honoured. If someone was to lose capacity and control due to the fact they had turned into a zombie, and yet rights are extended to them, the Public Trustee could be extended to the zombies so that their final wishes are protected and society cannot take advantage of the vulnerable.

