# 2AC

### Joke K

**Abandoning rational epistemology ensures massive violence, destruction of debate, and death of political participation.**

**Sherry 96** – Suzanna, “The Sleep of Reason”, Georgetown Law Journal, Feb, lexis

Some, however, have suggested that the historical era of the Enlightenment was unique, and that epistemological pluralism would, in the modern world, create little danger of internecine warfare. 139 This optimism overlooks one of the fundamental differences between rational and **antirational epistemologies**: [\*479] because the latter **rest on faith** **rather than reason, they are likely to be impervious to persuasion and** resistant to **compromise**. 140 Moreover, without the skeptical cast of mind fostered by Enlightenment epistemology, antirational epistemologies -- especially religion, with its extrahuman source of authority -- are likely to be conducive to particularly deep conviction. **Deep conviction**, in turn, **is a breeding ground for** exactly **the religious wars of previous centuries**: In Abrams v. United States, Justice Holmes argued that a logical result of deep conviction is intolerance. As Dean Bollinger has added, failing to attempt to silence what one believes to be false might be seen as a sign of weak conviction. . . . To the zealous adherent, **intolerance and persecution become**, in a sense, **the measure of her commitment to** her religious **beliefs**. 141Even in the United States, where religion has largely been domesticated (as Michael Perry puts it), 142 we have not been spared all of the violence associated with pre-Enlightenment religious wars. Although, as Perry points out, "we are not the former Yugoslavia or India," 143 the Branch Davidians, the **W**orld **T**rade **C**enter **bombers**, the abortion clinic killings, **and the growth of** various **organizations -- on the left and the right, not all** of them **religious -- that use irrational arguments to** reject and **resist the authority of government**, by violence if necessary, **should** **give us pause before abandoning the fruits of the Enlightenment**. 144 Indeed, as one historian has pointed out: If we have now entered an era in which those on the right have been joined by some on the left in assailing reason as faulty because it does not correspond to the essential and incontestable truths they have come to know emotionally, or by virtue of their membership in particular groups, the prospects for deliberative democracy are bleak indeed. . . . **If truth resides in difference** and emotion, **then war rather than persuasion is the only possible consequence** **of speaking such a truth to power**. 145

**An epistemology based on rationality is humanity’s only hope – it prevents massive violence and ensures good policymaking.**

**Sherry 96** – Suzanna, “The Sleep of Reason”, Georgetown Law Journal, Feb, lexis

**The** primary **problem with epistemological pluralism is** that **there is no way to resolve disputes between epistemologies except by recourse to power**. In **this**, a regime of epistemological pluralism **resembles the** hostile religious pluralism -- and **religious warfare** -- that prevailed **before the Enlightenment**. The Enlightenment was in one sense a response to the absence of epistemological authority: "Incompatible appeals to authority seemed equally reasonable, and therefore equally suspect, as well as thoroughly useless as vehicles of rational persuasion." 133 Similarly, in the absence of an agreed epistemology, we cannot mediate between religious traditionalists and radical feminists; whether the traditional nuclear family is mandated or outlawed will depend on who has the most votes. 134 Indeed, despite their common epistemological claims, the radicals and the religionists are often in opposition to one another. Linda Hirshman, for example, claims that the recent religious revival is motivated by racism and sexism. 135 She is not alone; Frederick Gedicks notes that many postmodernists are as suspicious of religion as they are of reason. 136 Similarly, the established religions that rely most heavily on revelation, biblical literalism, and other nonrational forms of knowledge are often least willing to tolerate -- much less endorse -- the feminist and gay rights agendas urged by the radicals. At least some academic defenders of religious epistemologies simultaneously condemn the alternative epistemologies of radical feminists and critical race theorists. 137 [\*478] **Only the common language of reason allows us to persuade one another** and perhaps to conclude that in some areas -- such as family structure and private worship -- individuals ought to be permitted to make their own choices. Many of those who argue for epistemological pluralism implicitly recognize that public appeals must take a rational form, since their own arguments rely on reason rather than on revelation. Indeed, **it is hard to see how epistemological pluralism can be supported except through appeals to reason.** Social constructivists are subject to the obvious criticism that their arguments for epistemological pluralism are also socially constructed and thus necessarily a matter of power relations; why, then, should we accept those arguments unless our own lack of power forces us to? 138 For religionists, whose truths are God-given and therefore necessarily superior to any human truths, granting any other epistemology an equal status is a betrayal of God's omnipotence. Only reasoned argument, grounded in common experience about human needs and the best ways to satisfy them, can yield a conclusion that individualized epistemologies should be tolerated or even welcomed. Moreover, unless we would agree with the medical student who refused to reject even a schizophrenic epistemology as deviant, **we** also **need a way to distinguish between acceptable and unacceptable epistemologies.** Again, **only empiricism and reasoned argument** -- about scientific likelihoods, about human happiness and suffering, about the adaptive usefulness of various beliefs **-- can allow us to draw such distinctions.**

### T – Prohibit

#### Restrict and regulate are synonymous

Paust ’08 (Mike & Teresa Baker Law Center Professor, University of Houston)

Jordan 14 U.C. Davis J. Int'l L. & Pol'y 205

The primacy of customary international law is also evident in an opinion by Justice Chase in 1800. In Bas v. Tingy, Justice Chase recognized that "if a general war is declared [by Congress], its extent and operations are only restricted and regulated by the jus belli, forming a part of the law of nations ... ." n47 Therefore, the law of nations (and, in particular, the law of war) necessarily restricts and regulates congressional authorization of war's extent and operations. n48 In 1798, Albert Gallatin had recognized similarly: "By virtue of ... [the war power], Congress could ... [act], provided it be according to the laws of nations and to treaties." n49 And in 1804, counsel had argued before the Supreme Court that "as far as Congress have thought proper to legislate us into a state of war, the law of nations in war is to apply." n50 The restrictive role of the laws of war [\*221] apparently formed the basis for Justice Story's statement in 1814 that conduct under a relevant act of Congress "was absorbed in the more general operation of the law of war" and was permissible "under the jus gentium" or law of nations. n51 Although there was no clash between the act and the laws of war, the laws of war recognizably had a higher, "more general" absorbing effect.

#### Counter-interp: Statutory restrictions are legislative limits

Law dictionary No Date

http://thelawdictionary.org/statutory-restriction/

STATUTORY RESTRICTION?

Limits or controls that have been place on activities by its ruling legislation

#### Neg interp impossible: Congress CANNOT prohibit

Colella ‘88

Frank SPRING, 1988 54 Brooklyn L. Rev. 131

Because the subsequent versions of the amendment sought to deny the executive any latitude in supporting the Contras, they seem to be examples of congressional overreaching. Congress may regulate aspects of "foreign covert action," but it cannot totally bar the president from carrying them out. n151 One commentator incisively observes, "[C]ongress cannot deny the President the capacity to function effectively in this area any more than it could deny the courts the capacity to carry out their independent constitutional duties." n152 The restrictions contained in later versions of the amendments n153 make it apparent that Congress prevented effective execution of the president's policy objectives.

### Biopolitics K

#### No prior questions

Cochran 99

Molly Cochran 99, Assistant Professor of International Affairs at Georgia Institute for Technology, “Normative Theory in International Relations”, 1999, pg. 272

To conclude this chapter, while modernist and postmodernist debates continue, while we are still unsure as to what we can legitimately identify as a feminist ethical/political concern, while we still are unclear about the relationship between discourse and experience, it is particularly important for feminists that we proceed with analysis of both the material (institutional and structural) as well as the discursive. This holds not only for feminists, but for all theorists oriented towards the goal of extending further moral inclusion in the present social sciences climate of epistemological uncertainty. Important ethical/political concerns hang in the balance. We cannot afford to wait for the meta-theoretical questions to be conclusively answered. Those answers may be unavailable. Nor can we wait for a credible vision of an alternative institutional order to appear before an emancipatory agenda can be kicked into gear. Nor do we have before us a chicken and egg question of which comes first: sorting out the metatheoretical issues or working out which practices contribute to a credible institutional vision. The two questions can and should be pursued together, and can be via moral imagination. Imagination can help us think beyond discursive and material conditions which limit us, by pushing the boundaries of those limitations in thought and examining what yields. In this respect, I believe international ethics as pragmatic critique can be a useful ally to feminist and normative theorists generally.

#### Congress checks on exec terror policy prevents state of exception

Mitzen 11

Dr. Jennifer, Associate Professor of Political Science at Ohio State University and Michael Newell, PhD student in Political Science at the Maxwell School of Citizenship and Public Affairs, “Crisis Authority, the War on Terror and the Future of Constitutional Democracy,” JUROS Arts & Humanities Vol. 2, http://libeas01.it.ohio-state.edu/ojs/index.php/juros/article/download/1265/1791

As Benjamin Wittes notes, the “presidential power model has failed,” and “Only Congress can ultimately write the law of this long war” (Wittes, 2008). The pursuit of terrorist policies through the exception has not resulted in clear, transparent and legally correct outcomes because the exception has been entirely controlled by “unilateral presidential actions” (Wittes, 2008). Instead, Congress “can build comprehensive legal systems and do so in the name of the political system as a whole” (Wittes, 2008). What this would entail would be a “law of terrorism” that would “at once restrain and empower the executive branch” in its actions in the War on Terror (Wittes, 2008). Simply allowing the executive to continue to unilaterally decide the fate of suspected terrorists and anti-terrorism policy will prove Agamben correct: that the American system of checks on power has been replaced with the primacy of the executive. It should then be Congress’ goal to step forward and outline the exact legal policies in the War on Terror, allowing President Obama this role will only prolong the elements of the exception that Agamben has given such dire warnings about.¶ Conclusion¶ The state of exception has been the standard response to crises for American presidents and other world leaders since the emergence of constitutional law and democratic government. Its creation and longevity as a political and legal tool should not be surprising. Constitutional democracies were not and are not designed to have laws and rules governing every potential complication that the country could face. Instead, it has been consistently argued that exceptional times require exceptional measures. The use of these measures when the public is ready and willing to accept the securitizing speech-act almost invariably lead to breaches of the law, and in Agamben’s opinion the expansion of executive authority. The War on Terror has seemingly reinforced Agamben’s argument, as the breadth and magnitude of legal issues resulting from this war have made the legal recovery extremely complicated.¶ However, some scholars suggest that the War on Terror has actually undermined the ability of the sovereign to invoke the state of exception, stating that instead:¶ In so far as it pursues this end, the effect of such commentary is to compound efforts to curtail the experience of deciding on/in the exception – efforts that are already well under way at Guantánamo Bay. For notwithstanding all the liberal heartache that they provoke, the law and legal institutions of Guantánamo Bay are working to negate the exception (Johns, 2005).¶ Johns suggests that the policies of the War on Terror are leading towards a tendency to condemn the state of exception and crisis authority. Johns bases his argument in the abundance of legal scholarship calling for “a newly fashioned emergency regime” that would “rescue the concept [of emergency power] from fascist thinkers like Carl Schmitt” (Johns, 2005). This logic would suggest that Agamben’s prediction is not coming true, that the executive will now be limited by what actions they can pursue during future crises and that the legal authority acquired by the executive during the War on Terror has been ceded back to its designated proprietors.¶ But for Johns to be proven right, it requires a change in long established habits. Citizens cannot expect the executive to singularly react to any complication the country faces. Indeed, Agamben’s warnings and the results of the War on Terror suggest that doing so will continue to produce dissatisfying results at best, immoral quagmires at worst. For democracy and constitutional governance to survive, it is the responsibility of officials and citizens alike to adapt existing legal structures to novel threats, and to not rely on executive mandate alone.

#### The state’s inevitable---reform is key

Passavant 7

Paul A. Passavant 7, Hobart and William Smith Colleges in New York, “The Contradictory State of Giorgio Agamben”, Political Theory Volume 35, Number 2, April, SAGE

Third, any social formation is constituted by elements of both contingency and determination. By emphasizing pure potentiality, Agamben misses this and either cherishes the excessive quality of pure potentiality to the neglect of the exigent needs of the present, or neglects how the active political subjects he does defend are embedded within finite commitments that necessarily persevere through the foreclosure of other possibilities. Some contemporary political theorists concerned with injustice and the lack of democracy also emphasize contingency, excess, and potentiality over determination, finitude, and acts.49 These theorists correctly seek to disrupt oppressive patterns. Since politics-hence political change-would not be possible under conditions of absolute determination, emphasizing contingency or excess makes sense. Yet reflection upon the retraction of certain state services from places like the Bronx during the late 1970s per mits us to see how neither justice nor democracy is served by excessive eco nomic duress or violence. Not only are these contingencies unjust, but also their incapacitating effects prevent democratic practices of government where the latter necessarily presupposes some collective capacity to direct and achieve collective purposes. State actions that mitigate chaos, economic inequality, and violence, then, potentially contribute to the improved justice of outcomes and democracy. Political theorists must temper celebrating contingency with a simultaneous consideration of the complicated relation that determination has to democratic purposes.50 ¶ Fourth, the state's institutions are among the few with the capacity to respond to the exigency of human needs identified by political theorists. These actions will necessarily be finite and less than wholly adequate, but responsibility may lie on the side of acknowledging these limitations and seeking to redress what is lacking in state action rather than calling for pure potentiality and an end to the state. We may conclude that claims to justice or democracy based on the wish to rid ourselves of the state once and for all are like George W. Bush claiming to be an environmentalist because he has proposed converting all of our cars so that they will run on hydrogen.5" Meanwhile, in the here and now, there are urgent claims that demand finite acts that by definition will be both divisive and less than what a situation demands.52 In the end, the state remains. Let us defend this state of due process and equal protection against its ruinous other.

#### Alt fails

Sinnerbrink 5

Robert Sinnerbrink 5, Professor of Philosophy at Macquarie University, Critical Horizons, Vol. 6, No. 1, p. 258-259

Foucault and Agamben leave us with a stark alternative: either to take the ethical turn towards practices of freedom compatible with neo-liberalist governmentality, or accelerate biopolitical nihilism in the hope that a messianic overcoming of the breach between bare life and sovereign power will institute a redeemed human community. In short, affirm pragmatic practices of ethical self-formation, or prepare for the messianic overcoming of biopolitical domination. These alternatives, however, seem partial and inadequate. Foucault’s turn to ethics and liberalism underplays the political urgency of confronting societies of biopolitical control; this is a point not lost on Deleuze and taken up by Hardt and Negri in their neo-Marxist version of biopolitical production.70 Agamben’s despairing account of biopolitical nihilism, on the other hand, overemphasises the ontological ‘sameness’ of biopower regimes, and retreats from concrete politics into a metaphysical messianism prophetically gesturing towards a utopian community to come. What my brief genealogy of biopower and biopolitics suggests, then, is the need to find a path between these alternatives. We should retain the Foucaultian emphasis on a critical analysis of biopower without acquiescing to an ethical accommodation with neo-liberalism. And we ought to affirm Agamben’s profound questioning of the biopolitical foundations of modernity without succumbing to a utopian metaphysical messianism. We also need to question the Heideggerian metaphysical critique of modernity that has profoundly marked both Foucaultian and Agambenian conceptions of biopower and biopolitics. Finally, this genealogy suggests the need to restore the experience of injustice, the suffering of human beings, to any philosophical account of biopolitics, and to articulate political responses to biopower that go beyond ethical acquiescence and metaphysical longing.

#### Democracy checks biopower impact

Dickinson 4

Edward Ross Dickinson 4, Associate Professor, History Ph.D., U.C. Berkeley, Central European History, Vol. 37 No. 1, p. 34-36

And it is, of course, embedded in a broader discursive complex (institutions, professions, fields of social, medical, and psychological expertise) that pursues these same aims in often even more effective and inescapable ways.89 In short, the continuities between early twentieth-century biopolitical discourse and the practices of the welfare state in our own time are unmistakable.¶ Both are instances of the “disciplinary society” and of biopolitical, regulatory, social-engineering modernity, and they share that genealogy with more authoritarian states, including the National Socialist state, but also fascist Italy, for example. And it is certainly fruitful to view them from this very broad perspective. But that analysis can easily become superficial and misleading, because it obfuscates the profoundly different strategic and local dynamics of power in the two kinds of regimes. Clearly the democratic welfare state is not only formally but also substantively quite different from totalitarianism. Above all, again, it has nowhere developed the fateful, radicalizing dynamic that characterized National Socialism (or for that matter Stalinism), the psychotic logic that leads from economistic population management to mass murder. Again, there is always the potential for such a discursive regime to generate coercive policies.¶ In those cases in which the regime of rights does not successfully produce “health,” such a system can —and historically does— create compulsory programs to enforce it. But again, there are political and policy potentials and constraints in such a structuring of biopolitics that are very different from those of National Socialist Germany. Democratic biopolitical regimes require, enable, and incite a degree of self-direction and participation that is functionally incompatible with authoritarian or totalitarian structures. And this pursuit of biopolitical ends through a regime of democratic citizenship does appear, historically, to have imposed increasingly narrow limits on coercive policies, and to have generated a “logic” or imperative of increasing liberalization. Despite limitations imposed by political context and the slow pace of discursive change, I think this is the unmistakable message of the really very impressive waves of legislative and welfare reforms in the 1920s or the 1970s in Germany.90¶ Of course it is not yet clear whether this is an irreversible dynamic of such systems. Nevertheless, such regimes are characterized by sufficient degrees of autonomy (and of the potential for its expansion) for sufficient numbers of people that I think it becomes useful to conceive of them as productive of a strategic configuration of power relations that might fruitfully be analyzed as a condition of “liberty,” just as much as they are productive of constraint, oppression, or manipulation. At the very least, totalitarianism cannot be the sole orientation point for our understanding of biopolitics, the only end point of the logic of social engineering. ¶ This notion is not at all at odds with the core of Foucauldian (and Peukertian) theory. Democratic welfare states are regimes of power/knowledge no less than early twentieth-century totalitarian states; these systems are not “opposites,” in the sense that they are two alternative ways of organizing the same thing. But they are two very different ways of organizing it. The concept “power” should not be read as a universal stifling night of oppression, manipulation, and entrapment, in which all political and social orders are grey, are essentially or effectively “the same.” Power is a set of social relations, in which individuals and groups have varying degrees of autonomy and effective subjectivity. And discourse is, as Foucault argued, “tactically polyvalent.” Discursive elements (like the various elements of biopolitics) can be combined in different ways to form parts of quite different strategies (like totalitarianism or the democratic welfare state); they cannot be assigned to one place in a structure, but rather circulate. The varying possible constellations of power in modern societies create “multiple modernities,” modern societies with quite radically differing potentials.91