# 1NC

### Off 1

#### Restrictions on executive war powers DO NOTHING for the state of political legal exception we live in and only gives further justification for violent intervention on the basis of legality

Dyzenhaus 05 (David, is a professor of Law and Philosophy at the University of Toronto, and a Fellow of the Royal Society of Canada, “Schmitt v. Dicey: Are States of Emergency Inside or Outside the Legal Order?” Cardozo Law Review 27)

Rossiter had in mind Lincoln's actions during the Civil War, including the proclamation by which Lincoln, without the prior authority of Congress, suspended habeas corpus. n35 Lincoln, he said, subscribed to a theory that in a time of emergency, the President could assume whatever legislative, executive, and judicial powers he thought necessary to preserve the nation, and could in the process break the "fundamental laws of the nation, if such a step were unavoidable." n36 This power included one ratified by the Supreme Court: "an almost unrestrained power to act toward insurrectionary citizens as if they were enemies of the United States, and thus place them outside the protection of the Constitution." Rossiter's difficulties here illustrate rather than solve the tensions inherent in the idea of constitutional dictatorship. On the one hand, he wants to assert that emergency rule in a liberal democracy can be constitutional in nature. "Constitutional" implies restraints and limits in accordance not only with law, but with fundamental laws. These laws are not the constitution that is in place for ordinary times; rather, they are the laws that govern the management of exceptional times - the eleven criteria that he developed for constitutional dictatorship. The criteria are either put within the discretion of the dictator - they are judgments about necessity - or are couched as limits that should be enshrined either in the constitution or in legislation. However, Rossiter does not properly address the fact that judgments about necessity are for the dictator to make, which means that these criteria are not limits or constraints but merely factors about which the dictator will have to decide. Other criteria look more like genuine limits. Moreover, they are limits that could be constitutionally enshrined - for example, the second criterion, which requires that the person who makes the decision that there is an emergency should not be the person who assumes dictatorial powers. Yet, as we have seen, Rossiter's foremost example of the modern constitutional dictator, Lincoln, not only gave himself dictatorial powers but, Rossiter supposes, had no choice but to do this. Moreover, if these criteria are constitutionally enshrined, so that part of the constitution is devoted to the rules that govern the time when the rest of the constitution might be suspended, they still form part of the constitution. So, no less than the ordinary constitution, what we can think of as the exceptional or emergency constitution - the constitution that governs the state of emergency - is subject to suspension should the dictator deem this necessary. This explains why, on the other hand, Rossiter equated emergency rule with potentially unlimited dictatorship, with Locke's idea of prerogative. And Rossiter said, "whatever the theory, in moments of extreme national emergency the facts have always been with ... John Locke." So Rossiter at one and the same time sees constitutional dictatorship as unconstrained in nature and as constrainable by principles - his eleven criteria. The upshot is that "constitutional" turns out not to mean what we usually take it to mean; rather, it is a misleading name for the hope that the person who assumes dictatorial powers does so because of a good faith evaluation that this is really necessary and with the honest and steadfast intention to return to the ordinary way of doing things as soon as possible. Giorgio Agamben is thus right to remark that the bid by modern theorists of constitutional dictatorship to rely on the tradition of Roman dictatorship is misleading. n39 They rely on that tradition in an effort to show that dictatorship is constitutional or law-governed. But in fact they show that dictatorship is in principle absolute - the dictator is subject to whatever limits he deems necessary, which means to no limits at all. As H.L.A. Hart described the sovereign within the tradition of legal positivism, the dictator is an uncommanded commander. n40 He [\*2015] operates within a black hole, in Agamben's words, "an emptiness of law." n41 Agamben thus suggests that the real analogue to the contemporary state of emergency is not the Roman dictatorship but the institution of iustitium, in which the law is used to produce a "juridical void" - a total suspension of law. n42 And in coming to this conclusion, Agamben sides with Carl Schmitt, his principal interlocutor in his book. However, it is important to see that Schmitt's understanding of the state of exception is not quite a legal black hole, a juridically produced void. Rather, it is a space beyond law, a space which is revealed when law recedes, leaving the state, represented by the sovereign, to act. In substance, there might seem to be little difference between a legal black hole and space beyond law since neither is controlled by the rule of law. But there is a difference in that nearly all liberal legal theorists find the idea of a space beyond law antithetical, even if they suppose that law can be used to produce a legal void. This is so especially if such theorists want to claim for the sake of legitimacy that law is playing a role, even if it is the case that the role law plays is to suspend the rule of law. Schmitt would have regarded such claims as an attempt to cling to the wreckage of liberal conceptions of the rule of law brought about by any attempt to respond to emergencies through the law. They represent a vain effort to banish the exception from legal order. Because liberals cannot countenance the idea of politics uncontrolled by law, they place a veneer of legality on the political, which allows the executive to do what it wants while claiming the legitimacy of the rule of law. We have seen that Rossiter presents a prominent example which supports Schmitt's view, and as I will now show, it is a depressing fact that much recent post 9/11 work on emergencies is also supportive of Schmitt's view. II. Responding to 9/11 For example, Bruce Ackerman in his essay, The Emergency Constitution, n43 starts by claiming that we need "new constitutional concepts" in order to avoid the downward spiral in protection of civil liberties that occurs when politicians enact laws that become increasingly repressive with each new terrorist attack. n44 We need, he says, to rescue the concept of "emergency powers ... from fascist thinkers like Carl Schmitt, who used it as a battering ram against liberal [\*2016] democracy." n45 Because Ackerman does not think that judges are likely to do, or can do, better than they have in the past at containing the executive during an emergency, he proposes mainly the creative design of constitutional checks and balances to ensure, as did the Roman dictatorship, against the normalization of the state of emergency. Judges should not be regarded as "miraculous saviors of our threatened heritage of freedom." n46 Hence, it is better to rely on a system of political incentives and disincentives, a "political economy" that will prevent abuse of emergency powers. He calls his first device the "supramajoritarian escalator" n48 - basically the requirement that a declaration of a state of emergency requires legislative endorsement within a very short time, and thereafter has to be renewed at short intervals, with each renewal requiring the approval of a larger majority of legislators. The idea is that it will become increasingly easy with time for even a small minority of legislators to bring the emergency to an end, thus decreasing the opportunities for executive abuse of power. n49 The second device requires the executive to share security intelligence with legislative committees and that a majority of the seats on these committees belong to the opposition party. Ackerman does see some role for courts. They will have a macro role should the executive flout the constitutional devices. While he recognizes both that the executive might simply assert the necessity to suspend the emergency constitution and that this assertion might enjoy popular support, he supposes that if the courts declare that the executive is violating the constitution, this will give the public pause and thus will decrease incentives on the executive to evade the constitution. n51 In addition, the courts will have a micro role in supervising what he regards as the inevitable process of detaining suspects without trial for the period of the emergency. Suspects should be brought to court and some explanation should be given of the grounds of their detention, not so that they can contest it - a matter which Ackerman does not regard as practicable - but in order both to give the suspects a public identity so that they do not disappear and to provide a basis for compensation once the emergency is over in case the executive turns out to have fabricated [\*2017] its reasons. He also wishes to maintain a constitutional prohibition on torture, which he thinks can be enforced by requiring regular visits by lawyers. Not only is the judicial role limited, but it is clear that Ackerman does not see the courts as having much to do with preventing a period of "sheer lawlessness." n53 Even within the section on the judiciary, he says that the real restraint on the executive will be the knowledge that the supramajoritarian escalator might bring the emergency to an end, whereupon the detainees will be released if there is no hard evidence to justify detaining them. In sum, according to Ackerman, judges have at best a minimal role to play during a state of emergency. We cannot really escape from the fact that a state of emergency is a legally created black hole, a lawless void. It is subject to external constraints, controls on the executive located at the constitutional level and policed by the legislature. But internally, the rule of law does next to no work; all that we can reasonably hope for is decency. But once one has conceded that internally a state of emergency is more or less a legal black hole because the rule of law, as policed by judges, has no or little purchase, it becomes difficult to understand how external legal constraints, the constitutionally entrenched devices, can play the role Ackerman sets out. Recall that Ackerman accepts that the reason we should not give judges more than a minimal role is the history of judicial failure to uphold the rule of law during emergencies in the face of executive assertions of a necessity to operate outside of law's rule. For that reason, he constructs a political economy to constrain emergency powers. But that political economy still has to be located in law in order to be enforceable, which means that Ackerman cannot help but rely on judges. But why should we accept his claim that we can rely on judges when the executive asserts the necessity of suspending the exceptional constitution, the constitution for the state of emergency, when one of his premises is that we cannot so rely? Far from rescuing the concept of emergency powers from Schmitt, Ackerman's devices for an emergency constitution, an attempt to update Rossiter's model of constitutional dictatorship, fails for the same reasons that Rossiter's model fails. Even as they attempt to respond to Schmitt's challenge, they seem to prove the claim that Schmitt made in late Weimar that law cannot effectively enshrine a distinction between constitutional dictatorship and dictatorship. They appear to be vain attempts to find a role for law while at the same time conceding that law has no role. Of course, this last claim trades on an ambiguity in the idea of the rule of law between, on the one hand, the rule of law, understood as the rule of substantive principles, and, on the other, rule by law, where as long as there is a legal warrant for what government does, government will be considered to be in compliance with the rule of law. Only if one holds to a fairly substantive or thick conception of the rule of law will one think that there is a point on a continuum of legality where rule by law ceases to be in accordance with the rule of law. Ackerman's argument for rule by law, by the law of the emergency constitution, might not answer Schmitt's challenge. But at least it attempts to avoid dignifying the legal void with the title of rule of law, even as it tries to use law to govern what it deems ungovernable by law. The same cannot be said of those responses to 9/11 that seem to suggest that legal black holes are not in tension with the rule of law, as long as they are properly created. While it is relatively rare to find a position that articulates so stark a view, it is quite common to find positions that are comfortable with grey holes, as long as these are properly created. A grey hole is a legal space in which there are some legal constraints on executive action - it is not a lawless void - but the constraints are so insubstantial that they pretty well permit government to do as it pleases. And since such grey holes permit government to have its cake and eat it too, to seem to be governing not only by law but in accordance with the rule of law, they and their endorsement by judges and academics might be even more dangerous from the perspective of the substantive conception of the rule of law than true black holes.

#### The affirmative purports to stand against war, but they do so in the name of humanity, security, rights and justice - They betray a universalism which can only result in imperialism and more war, turning the aff.

Rasch 2000 (William. "Conflict as a Vocation: Carl Schmitt and the Possibility of Politics." Theory Culture Society 17.1)

Schmitt would recognize these as the right questions to ask, would recognize them, in fact, as his own questions. They go to the heart of the nature and possibility of conflict (which is to say -- of politics), for wars conducted in the name of the universal normative instance are wars fought to end all wars, conflicts conducted in the name of the self-transcendence of all conflict. But what if, afterwards, we find out that the heaven of consensus and reconciliation turns out to be a realm in which conflict has been outlawed in the name of the good, the efficient, the comfortable? In a world where conflict has been outlawed, how is opposition to be staged? As uncorked agreement? It is precisely against this type of outlawry of opposition in the service of the status quo - more accurately, in the service of the unfolding and global expansion of a new type of moral and economic imperialism -- that Schmitt launches his counterattack. Since, to his mind, the non-decomposable sovereignty of the autonomous state is the only form of resistance available the fight against this seemingly relentless expansion, it is to the philosopher of state sovereignty par excellence, Hobbes, that he is drawn. Schmitt's "Kampf mit Weimar-Genf-Versailles" is quite explicitly an updated version of an older "Kampf mit Rom". In an interesting and clever move, Schmitt notices that Cole's guild-socialism, Laski's liberalism and French syndicalism all share arguments and perspectives with the social philosophers of Roman Catholicism as well as those of other Churches and sects, arguments that are aimed at relativizing the power of the state. Both the call to follow the dictates of conscience and the more explicit appeal to the higher morality as embodied in international structures (like the League or international revolutionary movements) are political weapons. The battle between "internationalism" and "nationalism", then, is not simply fought between the forces of freedom and oppression, but rather between the authority of one type of sovereign power and another. But, Schmitt warns: The Roman Catholic Church is no pluralist entity, and in its [the Church's] battle against the state, pluralism, at least since the 16th century, is on the side of the national states. A pluralist social theory contradicts itself if it wishes to remain pluralist and still play off the monism and universalism of the Roman Catholic Church, as secularized in the Second or Third International, against the state. To repeat: the battle, as he sees it, is between a sham and a true pluralism, between a pluralism in the service of a universal morality (accompanied, not so coincidentally, by a universal economy) and a pluralism in which no contestant can claim the moral high ground. It is the latter, morally neutral pluralism, based on autonomous entities, that best represents the structures and possibilities of a Schmittian form of politics. We can re-figure this debate is even more classical terms. What Schmitt argues for is a politics commensurable with the conditions found in the Earthly City, and what he argues against is the "fanaticism" of judging this terrestrial domain with standards only applicable in the City of God. Through his choice of Hobbes and the notion of state sovereignty may be deemed unfortunate and can be contested, his aim is to reconstruct a space of legitimate conflict as a space of secular politics. This space must remain immune to moral and theological infections; the Earthly City must retain a legitimacy that is autonomous from the moral but other-worldly claims of the City of God, claims that can only be redeemed at the end of history --- which is to say, not on this earth. Accordingly, his critique of the "humanism" of modern liberalism is akin to an older critique of religious fanaticism. Despite his Catholicism, Schmitt is much like the Luther who supported the princes, even though he recognized their greed and cruelty, against the prophetic iconoclasts and the Armageddon of the peasant uprisings. The eschatology of religious or secular revolutions is precisely anti-political. They advocate change to outlaw change. They oppose the order of the world in order to welcome the Messiah. Once His arrival is imminent (no matter how long imminence lasts), opposition to the order of the world becomes sin. They wage wars, repeatedly, to end war. They wage wars, but not just any wars; they wage just wars. "They", the particular instance, wage wars in the name of the universal principle, in the name of humanity, outlawing all opposition: as, for example, was attempted in the "war-guilt" clause of the Versailles Treaty, which turned a war of competing national interests into a just war against an unjust enemy; and as was attempted in the Kellogg-Briand Pact of 1928, turning wars in the national interest into crimes, and wars in the interest of the universal principle into crusades. "Imperialism does not conduct national wars", Schmitt ironically observes, referring to what he sees as the particularly modern, i.e. legal and economic, form of imperialism conducted by the Anglo-American world; "at most it conducts wars that serve international politics; it conducts no unjust, only just wars"; or, as Wyndham Lewis was to put it a few years after the Second World War: "But what war that was ever fought was an unjust war, except of course that waged by the enemy?"

#### Our alternative is to recognize the necessity of the opposition. Sovereignty necessarily functions in exception to the law. This exception is necessary to avoid the universal violence of the Law and the affirmative.

Rasch 2000 (William. "Conflict as a Vocation: Carl Schmitt and the Possibility of Politics." Theory Culture Society 17.1)

It is not difficult to see that the polemical elevation of sovereignty over the rule of law replicates a lively historical opposition, one that can be perhaps best evoked by that happy pair, Hobbes and Locke. Within the liberal tradition, the rule of law invokes reason and calculability in its battles against the arbitrary and potentially despotic whim of an unrestrained sovereign. The legitimacy of the sovereign is thus replaced by a legality that claims to provide its own immanent and unforced legitimacy. Predictable and universally accessible reason - the normative validity of an "uncorked consensus", to use the words of a prominent modern exponent - gently usurps, so it is claimed, the place that would otherwise be occupied by a cynical, pragmatic utilitarianism and the tyranny of a dark, incalculable will. The rule of law brings all the comforts of an uncontroversial, rule-based, normative security as if legality preceded by way of simple logical derivation, abolishing above all the necessity of decisions. Schmitt clearly will have none of this and in various writings attempts to expose what he considers to be the two-fold fallacy of the liberal position. As we have seen, if taken at its word, legality, or the rule of law, is seen by Schmitt to be impotent; it can neither legitimize nor effectively defend itself against determined enemies in times of crisis. Were law truly the opposite of force, it would cease to exist. But this self-description is deceptive, for if judged by its deeds, the same liberal regime that enunciates the self-evidence validity of universal norms strives to enact a universal consensus that is, indeed, far from uncorked. The rule of law inevitably reveals itself, precisely during moments of crisis, as the force of law, perhaps, not every bit as violent and "irrational" as the arbitrary tyrant, but nonetheless compelling and irresistible - indeed, necessarily so. Thus, Schmitt would argue the distinction between "decision", "force" and sovereignty", on the one hand, and the "rule of law", on the other, is based on a blithe and simple illusion. What agitates Schmitt is not the force, but the deception. More precisely, what agitates Schmitt is what he perceives to be the elimination of politics in the name of a higher legal or moral order. In its claim to a universal, normative, rule-bound validity, the liberal sleight-of-hand reveals itself to be not the opposite of force, but a force that outlaws opposition. In resurrecting the notion of sovereignty, therefore, Schmitt sees himself as one who rescues a legitimate notion of politics. Of course, this rescue attempt is itself political, a battle over the correct definition of politics. That is, we are not merely dealing with a logical problem, and not merely dealing with a desire to provide constitutional mechanisms that would prevent the self-dissolution of the constitution. Rather, we are dealing with a contest between a particularist notion of politics, in which individual conflicts can be resolved, but in which antagonism as a structure and reservoir of possible future conflicts is never destroyed, versus politics as the historical unfolding and pacific expansion of the universal morality. To evoke the long shadows of an ongoing contemporary debate, we are dealing with the difference between a politics of dissensus and a politics of consensus. Whereas the latter ideology entails an explicit or implicit belief in the "highest good" that can be rationally discerned and achieved, a "right regime", to use Leo Strauss's term, or the "just society" that hopes to actualize aspects of the City of God here on earth, the former stresses the necessity of determining a workable order where no single order bears the mantle of necessity, in fact, where all order is contingent, hence imperfect, and thus seeks to make the best of an inherently contradictory world by erecting structures that minimize self-inflicted damage. In Schmitt's eyes, the elements of such a structure must be the manifold of sovereign states. The liberal says there can only be one world-wide sovereign, the sovereignty of a universal moral and legal order. Schmitt counters with a plurality of equal sovereigns, for only in this way, he believes, can the economic and moral extinction of politics be prevented. Politics, on this view, is not the means by which the universally acknowledged good is actualized, but the mechanism that negotiates and limits disputes in the absence of any universally acknowledged good. Politics exists, in other words, because the just society does not.

#### This requires the unchecked authority of the executive to respond to the exception.

Nagan and Haddad 12 (Winston and Aitza, "Sovereignty in Theory and Practice." San Diego International Law Journal 13)

Although Schmitt was German, his ideas about sovereignty, and the political exception have had influence on the American theory and practice of sovereignty. Carl Schmitt was a philosophic theorist of sovereignty during the Third Reich. n375 His ideas about sovereignty and its above the law placement in the political culture of the State have important parallels in the developing discourse in the United States about the scope of presidential authority and power. His views have attracted the attention of American theorists. Schmitt developed his view of sovereignty on the concept described as "the exception". n376 This idea suggests that the sovereign or executive may invoke the idea of exceptional powers which are distinct from the general theory of the State. In Schmitt's view, the normal condition of the functions of the theory of a State, rides with the existence of the idea of the "exception." The exception is in effect intrinsic to the idea of a normal State. In his view, [\*487] the normal legal order of a State depends on the existence of an exception. n377 The exception is based on the continuing existence of an existential threat to the State and it is the sovereign that must decide on the exception. n378 In short, the political life of a State comprises allies and enemies. For the purpose of Statecraft, "an enemy exists only when at least potentially, one fighting collectivity of people confronts another similar collectivity." n379 In this sense, the political reality of the State always confronts the issue of the survival of the group. This reality is explained as follows. The political is the most intense and extreme antagonism, and every concrete antagonism becomes that much more political the closer it approaches the most extreme point, that of the friend-enemy grouping. \*\*\* As an ever present possibility [war] is the leading presupposition which determines in a characteristic way human action and thinking and hereby creates a specifically political behavior.\*\*\* A world in which the possibility of war is utterly eliminated, a completely pacified globe, would be a world without the distinction between friend and enemy and hence a world without politics. n380 Schmitt's view bases the supremacy of the exception on the supremacy of politics and power. n381 Thus, the exception, as rooted in the competence of the executive, is not dependent on law for its authority but on the conditions of power and conflict, which are implicitly pre-legal. n382 The central idea is that in an emergency, the power to decide based on the exception accepts its normal superiority over law on the basis that the suspension of the law is justified by the pre-legal right to self-preservation. n383 Schmitt's view is a powerful justification for the exercise of extraordinary powers, which he regards as ordinary, by executive authority. This is a tempting view for executive officers but it may not be an adequate explanation of the interplay of power, legitimacy, and the constitutional foundations of a rule of law State. In a later section, we draw on insights from the New Haven School, which deals empirically with the problem of power and the problem of constituting authority using the methods of contextual mapping. Nonetheless, Schmitt's view provides support for theorists who seek to enlarge executive power on the unitary presidency theory.

### Off 2

#### Their impact claims require a defense of the intrinsic value of human survival as separated from other forms of life. This involves the image of distinctly good human life contrasted to the banal useless existence of the genes. This makes the aff’s political subjectivity an affect of a species-contingent survival paradigm which abandons bare life.

KOCHI & ORDAN 2K8 [tarik and noam, queen’s university and bar llan university, “an argument for the global suicide of humanity”, vol 7. no. 4., bourderlands e-journal]

If only some of our genes but not our species has survived, maybe the emphasis we place upon the notion of ‘survival’ is more cultural than simply genetic. Such an emphasis stems not only from our higher cognitive powers of ‘self-consciousness’ or self-awareness, but also from our conscious celebration of this fact: the image we create for ourselves of ‘humanity’, which is produced by via language, collective memory and historical narrative. The notion of the ‘human’ involves an identification of our species with particular characteristics with and upon which we ascribe certain notions of value. Amongst others such characteristics and values might be seen to include: the notion of an inherent ‘human dignity’, the virtue of ethical behaviour, the capacities of creative and aesthetic thought, and for some, the notion of an eternal soul. Humans are conscious of themselves as humans and value the characteristics that make us distinctly ‘human’. When many, like Hawing, typically think of the notion of the survival of the human race, it is perhaps this cultural-cognitive aspect of homo sapiens, made possible and produced by human self-consciousness, which they are thinking of. If one is to make the normative argument that the human race should survive, then one needs to argue it is these cultural-cognitive aspects of humanity, and not merely a portion of our genes, that is worth saving. However, it remains an open question as to what cultural-cognitive aspect of humanity would survive in the future when placed under radical environmental and evolutionary pressures. We can consider that perhaps the fish people, having the capacity for self-awareness, would consider themselves as the continuation or next step of ‘humanity’. Yet, who is to say that a leap in the process of evolution would not prompt a change in self awareness, a different form of abstract reasoning about the species, a different self-narrative, in which case the descendents of humans would look upon their biological and genetic ancestors in a similar manner to the way humans look upon the apes today. Conceivably the fish people might even forget or suppress their evolutionary human heritage. While such a future cannot be predicted, it also cannot be controlled from our graves. In something of a sense similar to the point made by Giorgio Agamben (1998), revising ideas found within the writings of Michel Foucault and Aristotle, the question of survival can be thought to involve a distinction between the ‘good life’ and ‘bare life’. In this instance, arguments in favour of human survival rest upon a certain belief in a distinctly human good life, as opposed to bare biological life, the life of the gene pool. It is thus such a good life, or at least a form of life considered to be of value, that is held up by a particular species to be worth saving. When considering the hypothetical example of the fish people, what cultural-cognitive aspect of humanity’s good life would survive? The conditions of life under water, which presumably for the first thousand years would be quite harsh, would perhaps make the task of bare survival rather than the continuation of any higher aspects of a ‘human heritage’ the priority. Learning how to hunt and gather or farm underwater, learning how to communicate, breed effectively and avoid getting eaten by predators might displace the possibilities of listening to Mozart or Bach, or adhering to the Universal Declaration of Human Rights, or playing sport, or of even using written language or complex mathematics. Within such an extreme example it becomes highly questionable to what extent a ‘human heritage’ would survive and thus to what extent we might consider our descendents to be ‘human’. In the case where what survives would not be the cultural-cognitive aspects of a human heritage considered a valuable or a good form of life, then, what really survives is just life. Such a life may well hold a worth or value altogether different to our various historical valuations and calculations. While the example of the fish people might seem extreme, it presents a similar set of acute circumstances which would be faced within any adaptation to a new habitat whether on the earth or in outer space. Unless humans are saved by radical developments in technology that allow a comfortable colonisation of other worlds, then genetic adaptation in the future retains a reasonable degree of probability. However, even if the promise of technology allows humans to carry on their cultural-cognitive heritage within another habitat, such survival is still perhaps problematic given the dark, violent, cruel and brutal aspects of human life which we would presumably carry with us into our colonisation of new worlds. Thinkers like Hawking, who place their faith in technology, also place a great deal of faith in a particular view of a human heritage which they think is worth saving. When considering the question of survival, such thinkers typically project a one-sided image of humanity into the future. Such a view presents a picture of only the good aspects of humanity climbing aboard a space-craft and spreading out over the universe. This presumes that only the ‘good aspects’ of the human heritage would survive, elements such as ‘reason’, creativity, playfulness, compassion, love, fortitude, hope. What however happens to the ‘bad’ aspects of the human heritage, the drives, motivations and thoughts that led to the Holocaust for example?

#### This species-contingent paradigm creates unending genocidal violence against forms of life deemed politically unqualified.

KOCHI & ORDAN 2K8 [tarik and noam, queen’s university and bar llan university, “an argument for the global suicide of humanity”, vol 7. no. 4., bourderlands e-journal]

Within the picture many paint of humanity, events such as the Holocaust are considered as an exception, an aberration. The Holocaust is often portrayed as an example of ‘evil’, a moment of hatred, madness and cruelty (cf. the differing accounts of ‘evil’ given in Neiman, 2004). The event is also treated as one through which humanity comprehend its own weakness and draw strength, via the resolve that such actions will never happen again. However, if we take seriously the differing ways in which the Holocaust was ‘evil’, then one must surely include along side it the almost uncountable numbers of genocides that have occurred throughout human history. Hence, if we are to think of the content of the ‘human heritage’, then this must include the annihilation of indigenous peoples and their cultures across the globe and the manner in which their beliefs, behaviours and social practices have been erased from what the people of the ‘West’ generally consider to be the content of a human heritage. Again the history of colonialism is telling here. It reminds us exactly how normal, regular and mundane acts of annihilation of different forms of human life and culture have been throughout human history. Indeed the history of colonialism, in its various guises, points to the fact that so many of our legal institutions and forms of ethical life (i.e. nation-states which pride themselves on protecting human rights through the rule of law) have been founded upon colonial violence, war and the appropriation of other peoples’ land (Schmitt, 2003; Benjamin, 1986). Further, the history of colonialism highlights the central function of ‘race war’ that often underlies human social organisation and many of its legal and ethical systems of thought (Foucault, 2003). This history of modern colonialism thus presents a key to understanding that events such as the Holocaust are not an aberration and exception but are closer to the norm, and sadly, lie at the heart of any heritage of humanity. After all, all too often the European colonisation of the globe was justified by arguments that indigenous inhabitants were racially ‘inferior’ and in some instances that they were closer to ‘apes’ than to humans (Diamond, 2006). Such violence justified by an erroneous view of ‘race’ is in many ways merely an extension of an underlying attitude of speciesism involving a long history of killing and enslavement of non-human species by humans. Such a connection between the two histories of inter-human violence (via the mythical notion of differing human ‘races’) and interspecies violence, is well expressed in Isaac Bashevis Singer’s comment that whereas humans consider themselves “the crown of creation”, for animals “all people are Nazis” and animal life is “an eternal Treblinka” (Singer, 1968, p.750).

#### The alternative is that the judge should vote negative to reject the human/animal divide. This rejection enables an understanding of the species-being. That solves the ethical contradiction of their species-level racism.

HUDSON 2K4 [Laura, The Political Animal: Species-Being and Bare Life, mediations journal, <http://www.mediationsjournal.org/files/Mediations23_2_04.pdf>]

We are all equally reduced to mere specimens of human biology, mute and uncomprehending of the world in which we are thrown. Species-being, or “humanity as a species,” may require this recognition to move beyond the pseudo-essence of the religion of humanism. Recognizing that what we call “the human” is an abstraction that fails to fully describe what we are, we may come to find a new way of understanding humanity that recuperates the natural without domination. The bare life that results from expulsion from the law removes even the illusion of freedom. Regardless of one’s location in production, the threat of losing even the fiction of citizenship and freedom affects everyone. This may create new means of organizing resistance across the particular divisions of society. Furthermore, the concept of bare life allows us to gesture toward a more detailed, concrete idea of what species-being may look like. Agamben hints that in the recognition of this fact, that in our essence we are all animals, that we are all living dead, might reside the possibility of a kind of redemption. Rather than the mystical horizon of a future community, the passage to species-being may be experienced as a deprivation, a loss of identity. Species-being is not merely a positive result of the development of history; it is equally the absence of many of the features of “humanity” through which we have learned to make sense of our world. It is an absence of the kind of individuality and atomism that structure our world under capitalism and underlie liberal democracy, and which continue to inform the tenets of deep ecology. The development of species-being requires the collapse of the distinction between human and animal in order to change the shape of our relationships with the natural world. A true species-being depends on a sort of reconciliation between our “human” and “animal” selves, a breakdown of the distinction between the two both within ourselves and in nature in general. Bare life would then represent not only expulsion from the law but the possibility of its overcoming. Positioned in the zone of indistinction, no longer a subject of the law but still subjected to it through absence, what we equivocally call “the human” in general becomes virtually indistinguishable from the animal or nature. But through this expulsion and absence, we may see not only the law but the system of capitalism that shapes it from a position no longer blinded or captivated by its spell. The structure of the law is revealed as always suspect in the false division between natural and political life, which are never truly separable. Though clearly the situation is not yet as dire as Agamben’s invocation of the Holocaust suggests, we are all, as citizens, under the threat of the state of exception. With the decline of the nation as a form of social organization, the whittling away of civil liberties and, with them, the state’s promise of “the good life” (or “the good death”) even in the most developed nations, with the weakening of labor as the bearer of resistance to exploitation, how are we to envision the future of politics and society?

### Off 3

#### TEXT: The United States Congress should pass and at least three-fourths of the states should ratify a constitutional amendment which requires that all detained individuals must be guaranteed due process. It should specify that detainees who are denied any due process should be released and cannot be transferred by the executive.

#### Amendments can overturn the Supreme Court

Schaffner ‘05

 American University Law Review, Associate Professor of Law, George Washington University Law School

Because the judicial branch has the ultimate authority over constitutional interpretation and construction, the only "check" on judicial power of constitutional interpretation is the constitutional amendment process. The amendment process should be used to overturn the Court only when it acts beyond its powers or inconsistently with constitutional principles. Otherwise, the careful balance of powers among the branches is compromised. The history of amending the Constitution to overrule Supreme Court decisions is consistent with this view and is particularly relevant here. While the U.S. Supreme Court is not being overturned by the FMA, the Massachusetts Supreme Judicial Court's Goodridge decision is in jeopardy. Goodridge was the catalyst for the fervor behind the proposed marriage amendment. Moreover, the FMA will forever prevent the U.S. Supreme Court from addressing the issue. Only four constitutional amendments have been adopted to overrule the Supreme Court. n186 They are: (1) the Eleventh Amendment, which overruled Chisolm v. Georgia; n187 (2) the Thirteenth Amendment and, most specifically, the first sentence of the [\*1519] Fourteenth Amendment, n188 which overruled Dred Scott v. Sanford; n189 (3) the Sixteenth Amendment, which overruled Pollack v. Farmer's Loan & Trust Co.; n190 and (4) the Twenty-Sixth Amendment, which overruled Oregon v. Mitchell. n191 As we will see, each amendment was in harmony with the basic principles that underlie the Constitution - individual rights, separation of powers, and federalism. Moreover, in the cases where fundamental liberty interests were at stake, the amendment reestablished individual rights in light of the Court's limited interpretation of those rights. Without analyzing the propriety of the individual Supreme Court decisions, the following will demonstrate that, unlike the FMA, the use of the amendment power to overrule these cases was proper and consistent with basic democratic principles.

### Off 4

#### Deference now

Bazzle, J.D., Georgetown University Law Center, ‘12

[Timothy, “SHUTTING THE COURTHOUSE DOORS:¶ INVOKING THE STATE SECRETS PRIVILEGE TO THWART¶ JUDICIAL REVIEW IN THE AGE OF TERROR”, Civil Rights Law Journal, Vol. 23, No. 1, 2012,]

The war on terror has led to an increased use of the state secrets¶ privilege by the Executive Branch—to dismiss legal challenges to¶ widely publicized and controversial government actions—ostensibly¶ aimed at protecting national security from terrorist threats.1¶ Faced¶ with complaints that allege indiscriminate and warrantless surveillance,2¶ tortious detention, and torture that flouts domestic and international law,3¶ courts have had to reconcile impassioned appeals for¶ private justice with the government’s unyielding insistence on protecting national security. Courts, almost unanimously, have cast their lot¶ with national security, granting considerable deference to government¶ assertions of the state secrets principle. This deference to state secrets¶ shows no signs of abating; indeed, the growing trend is for courts to¶ dismiss these legal challenges pre-discovery,4¶ even before the private¶ litigants have had the chance to present actual, non-secret evidence to¶ meet their burden of proof. Although many looked optimistically at¶ President Obama’s inauguration as a chance to break decisively from¶ the Bush Administration’s aggressive application of the state secrets privilege,5¶ the Obama Administration has largely disappointed on the¶ state-secrets front, asserting the privilege with just as much fervor—if¶ not as much regularity6¶ —as its predecessor.7¶ Judicial deference to such claims of state secrecy, whether the¶ claims merit privileged treatment, exacts a decisive toll on claimants,¶ permanently shutting the courthouse doors to their claims and interfering with public and private rights.8¶ Moreover, courts’ adoption of a¶ sweeping view of the state secrets privilege has raised the specter of¶ the government disingenuously invoking state secrets to conceal government misbehavior under the guise of national security.9¶ By granting greater deference to assertions of the state secrets privilege, courts¶ share responsibility for eroding judicial review as a meaningful check¶ on Executive Branch excesses. This Article argues for a return to a¶ narrowly tailored state secrets privilege—one that ensures that individuals who allege a credible claim of government wrongdoing retain¶ their due process rights.

#### Court action to eliminate indefinite detention makes effective warfighting impossible. (Also, congress CP avoids the DA)

Chertoff 11

(Michael was the Secretary, Department of Homeland Security (2005-2009), THE DECLINE OF JUDICIAL DEFERENCE ON NATIONAL SECURITY, Rutgers Law Review, 3 February 2011, http://www.rutgerslawreview.com/wp-content/uploads/archive/vol63/Issue4/Chertoff\_Speech\_PDF.pdf, pg. 1125-1128)

So, where has this left us? It has left us in a puzzling situation. ¶ In a decision called Al-Bihani in the D.C. Circuit in 2010, Judge ¶ Janice Rogers Brown talked about the consequences—practical ¶ consequences—of having habeas review in Guantánamo as it affects ¶ the battlefield.42 And what she said is that the process at the tail end ¶ is now impacting the front end because when you conduct combat ¶ operations, you now have to worry about collecting evidence.43¶ A somewhat darker analysis has been put forward by Ben Wittes ¶ who has recently written a book called Detention and Denial, where ¶ he argues that the courts have now created an incentive system to ¶ kill rather than capture.44 And much of the law of war over the years ¶ was designed to move away from the “give no quarter” theory, where ¶ you killed everybody at the battlefield, into the theory of you would ¶ rather capture than kill. And his point, and you can agree or ¶ disagree with it, is that you have now actually loaded it the other ¶ way; you have pushed it in the direction of kill rather than capture.45 We have complete uncertainty now in the standards to be ¶ applied in the individual cases. If you read Ben Wittes‟s book ¶ Detention and Denial, he will details about ten or twelve district ¶ court cases where literally on the same facts you get different ¶ answers.46 And it is not that the district judges are not doing their ¶ best, but they have no guidance. There is no standard, and no one ¶ has offered them a standard.¶ We now have litigation about Bagram Air Force Base in ¶ Afghanistan.47 It was absolutely predictable when Boumediene was ¶ decided that the next case would be against Bagram Airbase. I do ¶ not know how it is going to come out at the end. I think it is still in ¶ the district court, but I will tell you, the logic—now they may have ¶ stopped the logic of Guantánamo—the logic of Boumediene certainly ¶ raises questions about Bagram. How do you wind up having habeas ¶ in Bagram? And then what is going to happen when you are in a ¶ forward firebase? Are you going to have habeas cases there? No one¶ knows, but the big problem is that the battlefield commanders do not ¶ know either; that is a serious operational problem.¶ In many ways, it is absolutely a great example of what the Court ¶ in Eisentrager predicted.48 When you go down this path, you are ¶ going to actually have real operational problems with warfighting. ¶ But of course, we are not in 1950 now; we are actually in active ¶ operations.¶ Finally, and I find this really to be the most interesting ¶ contemporary question posed by this series of issues, the press ¶ reports—and I cannot verify this, I am not confirming it, but I am ¶ assuming it to be true—the press reports that President Obama has ¶ authorized the killing of Anwar al-Aulaki, the American citizen in ¶ Yemen who is, in my mind for quite good reason, believed to be a ¶ major recruiter and operation leader for al-Qaeda.49 I want to be ¶ clear: I am perfectly okay with that, and I think it is exactly the right ¶ decision, so I do not want to be misunderstood. But I will say that if ¶ you read the decision and logic of Boumediene that is a very puzzling ¶ situation for al-Aulaki. Because if you need court permission to ¶ detain somebody, and if you need court permission to wiretap ¶ somebody, how can you kill that person without court permission? But that is what warfighting is. You cannot fight a war without that. ¶ There is current litigation on this issue where people are purporting ¶ to represent al-Aulaki‟s family.50 It has been tossed out, but we are ¶ just at the early stages. And frankly, I think we are going to see ¶ more of this.51 I have been reading that there are debates taking ¶ place about this. They are holding a moot court, I believe, on this ¶ issue.¶ A lot of interesting comments can be made about where we find ¶ ourselves, where the current administration finds itself if you believe ¶ the al-Aulaki allegations to be true. But to me, what it suggests is ¶ that when you abruptly change the attitude of deference—and I ¶ think you must look at Boumediene as an abrupt change—the ¶ consequences become unpredictable and very serious. And there is a ¶ reason that judges and courts in the past forswore from doing that. ¶ We may be seeing some of this play out. How it ends is difficult to ¶ predict. ¶ Before I take a few minutes of questions, let me conclude by ¶ making sure I do not cast blame only on the Court, because it is not ¶ the Court‟s fault. This is something where everybody was complicit in ¶ putting us in this situation—all three branches of government. The ¶ fact is, I was here about seven or eight years ago in 2003, at Rutgers, ¶ not here in this particular building but across the street where they ¶ have a campus, and I gave a talk. I had just left as head of the ¶ criminal division, and I said we have kind of put a lot of things ¶ together in a jerry-built way. We need to have a sustainable legal ¶ architecture that is going to make this a framework that we are ¶ comfortable with over a long period of time. Congress has to get ¶ involved—the executive branch has to go to Congress. It is seven ¶ years later, and we have not done it. So that, to me, is a failure of ¶ both branches. For the executive branch, the failure to push ¶ Congress on this has been a mistake. It has led to, for example, a lot ¶ of delay in setting up the administrative process for dealing with ¶ these detainees. Frankly, I think that was a strategic error that more ¶ or less baited the Court into doing what the Court did. I come from ¶ the old school of believing that whatever you think the right answer ¶ is, you do not want to test the limit of what you think it is if you can ¶ avoid it. You want to go into court with the strongest possible position, and you want to be the most modest and incremental in ¶ asking for power because that is how you maximize your chance to ¶ win. I do not think the executive branch was wise in pushing the ¶ envelope on this. That included also delaying the process for years. ¶ There was a lot of internal back and forth on that. It is unfortunate ¶ that the delaying impulse won. I think that some of the processes put ¶ in place in the first couple of rounds were overly scanty—it was more ¶ parsimonious than it should have been and than it needed to be. And ¶ this comes to the point: do not tempt fate. So the executive branch, by ¶ delaying and being parsimonious with how it handled these cases, ¶ essentially begged the Court—not literally but functionally—to get ¶ involved and to step into this. And that is historically, of course, ¶ what courts do.¶ Congress has never stepped up to the plate on this—other than ¶ the jurisdiction stripping in the Detainee Treatment Act and the ¶ Military Commissions Act.52 Even there, in terms of looking at what ¶ habeas might be and writing the kind of complex procedures you ¶ would need to really build the process for detaining people, Congress ¶ still has not stepped up to do that. There are people like Senator ¶ Lindsey Graham of South Carolina who are constantly out there ¶ saying that both parties should work together to identify a solution, ¶ but I have not seen the action taken yet. So, in a way, I have to say in ¶ defense of the decision in Boumediene, at some point when the Court ¶ sees that neither branch is addressing the problem, where there is a ¶ serious issue of balancing security and liberty, and where we are ¶ uncomfortable about the idea of just locking people up indefinitely ¶ without having some confidence that we can review it, the courts are ¶ going to step in. And that leads to the old adage that hard cases ¶ make bad law.¶ The best result, in my mind, would be for the executive branch ¶ and Congress to sit down and put together, like they did with the ¶ Debt Commission now, a plan that talks about how we deal with ¶ detaining people when we are not going to put them in a criminal ¶ case or in a military commission. What is the process of review? ¶ What should the procedural rights be? What should the standard be? ¶ And what is the ultimate target that the judge has to find? I would ¶ hope that if we got that kind of comprehensive and robust statute ¶ that the courts would back off and would give the deference that has ¶ traditionally been good both for the executive and for the courts when ¶ dealing with these kinds of sensitive national security issues.

#### Detention upholds judicial deference

Rives 7

(Jack L., Major General, The Judge Advocate General of the Air Force, The Bill of Rights and the Military, Introduction: Chief Justice Warren on the Bill of Rights and the Military, The Air Force Law Review, Vol. 60, <http://www.afjag.af.mil/shared/media/document/AFD-081009-007.pdf>, p. 3)

The final principle Chief Justice Warren identified – judicial deference to claims of military necessity – has received considerable attention in recent years. When he reviewed the Court’s scrutiny of “attempts of our civilian Government to extend military authority into other areas,”14 the Chief Justice contrasted the Court’s tendency to defer to claims of military necessity during wartime with the more active judicial role during what he called the “recent years of peacetime tension.”15 The World War II-era cases of Hirabayashi v. United States16 and Korematsu v. United States,17 sustained the detention of Japanese nationals and American citizens of Japanese descent living in the United States. In contrast, the Eisenhower-era case of Reid v. Covert18 rejected the extension of court-martial jurisdiction over civilian dependents and employees of the Armed Forces overseas. In his lecture, Chief Justice Warren concluded that “[w]hile situations may arise in which deference by the Court is compelling, the cases in which this has occurred demonstrate that such a restriction upon the scope of review is pregnant with danger to individual freedom.”19

#### Non-deferential judicial review kills military readiness

Chensey 9

(Robert M. is a Professor at University of Texas School of Law, NATIONAL SECURITY FACT DEFERENCE, VIRGINIA LAW REVIEW, 17 September 2009, http://www.virginialawreview.org/content/pdfs/95/1361.pdf, pg. 1426-1428)

Advocates of deference at times also emphasize the collateral ¶ consequences that non-deferential judicial review of executive ¶ branch factual judgments might have on related government operations or activities. On this view, the benefits of judicial review—¶ measured in terms of enforcement of separation of powers values ¶ or even enhancement of accuracy—in some circumstances may be ¶ outweighed by collateral costs entailed by the very process of nondeferential, or insufficiently deferential, review. ¶ When precisely does this argument come into play? Advocates ¶ of deference do not contend that collateral costs outweigh potential benefits in all national security related litigation. Indeed, the ¶ argument played no significant role in most of the examples surveyed in Part I. Most if not all judicial review of government action, after all, entails some degree of disruption to government operations. Government personnel, for example, often are obliged to ¶ spend some amount of time and resources participating, directly or ¶ indirectly, in the process of litigation, whether by serving as witnesses in a formal sense, gathering and reviewing documents, ¶ speaking informally with attorneys or investigators, and so forth. ¶ These litigation related activities to some extent are bound to disrupt the performance of ordinary government functions. ¶ But some such disruptions are more serious than others. Disruption of military activity, for example, may impose unusually high ¶ costs. So said Justice Jackson in Johnson v. Eisentrager,¶ 218 a postWorld War II decision denying habeas rights to a group of Ger- [page 1427] mans convicted of war crimes and detained in a U.S. controlled facility in Germany. Jackson gave many reasons for the decision, but ¶ placed particular emphasis on the undesirable practical consequences that would, in his view, follow from permitting any judicial ¶ review in this setting. These included: disruption of ongoing military operations, expenditure of scarce military resources, distraction of field commanders, harm to the prestige of commanders, and ¶ comfort to armed enemies.219 The government not surprisingly emphasized such concerns in the Hamdi litigation as well, though with ¶ much less success; and similar arguments continue to play a significant role today as courts grapple with still unresolved questions regarding the precise nature of habeas review of military determinations of enemy combatant status.220¶ But even in the enemy combatant setting, where disruption concerns arguably are near their zenith, this argument does not necessarily point in the direction of fact deference as the requisite solution. It did not persuade the Supreme Court in Hamdi to defer to ¶ the government’s factual judgment, nor did it do so in the more recent decision in Boumediene v. Bush dealing with noncitizen detainees held at Guantánamo. The impact of the argument in those ¶ cases instead was to prompt the Court to accept procedural innovations designed to ameliorate the impact of judicial review, rather ¶ than seeking to avoid that impact via deference.221 This is a useful ¶ reminder that even when the executive branch raises a legitimate ¶ concern in support of a fact deference argument, it does not follow ¶ automatically that deference is the only mechanism by which the ¶ judiciary can accommodate the concern. ¶ This leaves the matter of secrecy. Secrecy relates to the collateral consequences inquiry in the sense that failure to maintain secrecy with respect to national security information can have extralitigation consequences for government operations—as well as for [page 1428] individuals or even society as a whole—ranging from the innocuous ¶ to the disastrous. Without a doubt this is a significant concern. But, ¶ again, it is not clear that deference is required in order to address ¶ it. Preservation of secrecy is precisely the reason that the state secrets privilege exists, of course, and it also is the motive for the ¶ Classified Information Procedures Act, which establishes a process ¶ through which judges work with the parties to develop unclassified ¶ substitutes for evidence that must be withheld on secrecy ¶ grounds.222

#### Military readiness key to heg

Donnelly 3

(Thomas, resident fellow at AEI, The Underpinnings of the Bush Doctrine, February 1, <http://www.aei.org/article/foreign-and-defense-policy/the-underpinnings-of-the-bush-doctrine/>)

The preservation of today's Pax Americana rests upon both actual military strength and the perception of strength. The variety of victories scored by U.S. forces since the end of the cold war is testament to both the futility of directly challenging the United States and the desire of its enemies to keep poking and prodding to find a weakness in the American global order. Convincing would-be great powers, rogue states, and terrorists to accept the liberal democratic order--and the challenge to autocratic forms of rule that come with it--requires not only an overwhelming response when the peace is broken, but a willingness to step in when the danger is imminent. The message of the Bush Doctrine--"Don't even think about it!"--rests in part on a logic of preemption that underlies the logic of primacy.

#### Solves escalation of global hotspots- retrenchment causes bickering internationally over leadership and prevents cooperation

Brzezinski 2012 Zbigniew K. Brzezinski (CSIS counselor and trustee and cochairs the CSIS Advisory Board. He is also the Robert E. Osgood Professor of American Foreign Policy at the School of Advanced International Studies, Johns Hopkins University, in Washington, D.C. He is cochair of the American Committee for Peace in the Caucasus and a member of the International Advisory Board of the Atlantic Council. He is a former chairman of the American-Ukrainian Advisory Committee. He was a member of the Policy Planning Council of the Department of State from 1966 to 1968; chairman of the Humphrey Foreign Policy Task Force in the 1968 presidential campaign; director of the Trilateral Commission from 1973 to 1976; and principal foreign policy adviser to Jimmy Carter in the 1976 presidential campaign. From 1977 to 1981, Dr. Brzezinski was national security adviser to President Jimmy Carter. In 1981, he was awarded the Presidential Medal of Freedom for his role in the normalization of U.S.-China relations and for his contributions to the human rights and national security policies of the United States. He was also a member of the President’s Chemical Warfare Commission (1985), the National Security Council–Defense Department Commission on Integrated Long-Term Strategy (1987–1988), and the President’s Foreign Intelligence Advisory Board (1987–1989). In 1988, he was cochairman of the Bush National Security Advisory Task Force, and in 2004, he was cochairman of a Council on Foreign Relations task force that issued the report Iran: Time for a New Approach. Dr. Brzezinski received a B.A. and M.A. from McGill University (1949, 1950) and Ph.D. from Harvard University (1953). He was a member of the faculties of Columbia University (1960–1989) and Harvard University (1953–1960). Dr. Brzezinski holds honorary degrees from Georgetown University, Williams College, Fordham University, College of the Holy Cross, Alliance College, the Catholic University of Lublin, Warsaw University, and Vilnius University. He is the recipient of numerous honors and awards) February 2012 “After America” <http://www.foreignpolicy.com/articles/2012/01/03/after_america?page=0,0>

For if America falters, the world is unlikely to be dominated by a single preeminent successor -- not even China. International uncertainty, increased tension among global competitors, and even outright chaos would be far more likely outcomes. While a sudden, massive crisis of the American system -- for instance, another financial crisis -- would produce a fast-moving chain reaction leading to global political and economic disorder, a steady drift by America into increasingly pervasive decay or endlessly widening warfare with Islam would be unlikely to produce, even by 2025, an effective global successor. No single power will be ready by then to exercise the role that the world, upon the fall of the Soviet Union in 1991, expected the United States to play: the leader of a new, globally cooperative world order. More probable would be a protracted phase of rather inconclusive realignments of both global and regional power, with no grand winners and many more losers, in a setting of international uncertainty and even of potentially fatal risks to global well-being. Rather than a world where dreams of democracy flourish, a Hobbesian world of enhanced national security based on varying fusions of authoritarianism, nationalism, and religion could ensue. RELATED 8 Geopolitically Endangered Species The leaders of the world's second-rank powers, among them India, Japan, Russia, and some European countries, are already assessing the potential impact of U.S. decline on their respective national interests. The Japanese, fearful of an assertive China dominating the Asian mainland, may be thinking of closer links with Europe. Leaders in India and Japan may be considering closer political and even military cooperation in case America falters and China rises. Russia, while perhaps engaging in wishful thinking (even schadenfreude) about America's uncertain prospects, will almost certainly have its eye on the independent states of the former Soviet Union. Europe, not yet cohesive, would likely be pulled in several directions: Germany and Italy toward Russia because of commercial interests, France and insecure Central Europe in favor of a politically tighter European Union, and Britain toward manipulating a balance within the EU while preserving its special relationship with a declining United States. Others may move more rapidly to carve out their own regional spheres: Turkey in the area of the old Ottoman Empire, Brazil in the Southern Hemisphere, and so forth. None of these countries, however, will have the requisite combination of economic, financial, technological, and military power even to consider inheriting America's leading role. China, invariably mentioned as America's prospective successor, has an impressive imperial lineage and a strategic tradition of carefully calibrated patience, both of which have been critical to its overwhelmingly successful, several-thousand-year-long history. China thus prudently accepts the existing international system, even if it does not view the prevailing hierarchy as permanent. It recognizes that success depends not on the system's dramatic collapse but on its evolution toward a gradual redistribution of power. Moreover, the basic reality is that China is not yet ready to assume in full America's role in the world. Beijing's leaders themselves have repeatedly emphasized that on every important measure of development, wealth, and power, China will still be a modernizing and developing state several decades from now, significantly behind not only the United States but also Europe and Japan in the major per capita indices of modernity and national power. Accordingly, Chinese leaders have been restrained in laying any overt claims to global leadership. At some stage, however, a more assertive Chinese nationalism could arise and damage China's international interests. A swaggering, nationalistic Beijing would unintentionally mobilize a powerful regional coalition against itself. None of China's key neighbors -- India, Japan, and Russia -- is ready to acknowledge China's entitlement to America's place on the global totem pole. They might even seek support from a waning America to offset an overly assertive China. The resulting regional scramble could become intense, especially given the similar nationalistic tendencies among China's neighbors. A phase of acute international tension in Asia could ensue. Asia of the 21st century could then begin to resemble Europe of the 20th century -- violent and bloodthirsty. At the same time, the security of a number of weaker states located geographically next to major regional powers also depends on the international status quo reinforced by America's global preeminence -- and would be made significantly more vulnerable in proportion to America's decline. The states in that exposed position -- including Georgia, Taiwan, South Korea, Belarus, Ukraine, Afghanistan, Pakistan, Israel, and the greater Middle East -- are today's geopolitical equivalents of nature's most endangered species. Their fates are closely tied to the nature of the international environment left behind by a waning America, be it ordered and restrained or, much more likely, self-serving and expansionist. A faltering United States could also find its strategic partnership with Mexico in jeopardy. America's economic resilience and political stability have so far mitigated many of the challenges posed by such sensitive neighborhood issues as economic dependence, immigration, and the narcotics trade. A decline in American power, however, would likely undermine the health and good judgment of the U.S. economic and political systems. A waning United States would likely be more nationalistic, more defensive about its national identity, more paranoid about its homeland security, and less willing to sacrifice resources for the sake of others' development. The worsening of relations between a declining America and an internally troubled Mexico could even give rise to a particularly ominous phenomenon: the emergence, as a major issue in nationalistically aroused Mexican politics, of territorial claims justified by history and ignited by cross-border incidents. Another consequence of American decline could be a corrosion of the generally cooperative management of the global commons -- shared interests such as sea lanes, space, cyberspace, and the environment, whose protection is imperative to the long-term growth of the global economy and the continuation of basic geopolitical stability. In almost every case, the potential absence of a constructive and influential U.S. role would fatally undermine the essential communality of the global commons because the superiority and ubiquity of American power creates order where there would normally be conflict. None of this will necessarily come to pass. Nor is the concern that America's decline would generate global insecurity, endanger some vulnerable states, and produce a more troubled North American neighborhood an argument for U.S. global supremacy. In fact, the strategic complexities of the world in the 21st century make such supremacy unattainable. But those dreaming today of America's collapse would probably come to regret it. And as the world after America would be increasingly complicated and chaotic, it is imperative that the United States pursue a new, timely strategic vision for its foreign policy -- or start bracing itself for a dangerous slide into global turmoil.

### Solvency

#### Limitations fail during emergencies

Vermeule 6

Adrian Vermeule, Professor of Law, Harvard Law School, 2006, “THE EMERGENCY CONSTITUTION IN THE POSTSEPTEMBER¶ 11 WORLD ORDER: SELF‐DEFEATING PROPOSALS: ACKERMAN ON EMERGENCY POWERS,” Fordham Law¶ Review, Nov., pp. LN.

A statute could, in principle, perform such constitutional functions by aligning the various parties' expectations about the¶ future, which then provide a basis for objecting to usurpations or interference when the emergency occurs. However,¶ history shows that statutory limitations are weak during emergencies. The War Powers Resolution , which limited the¶ circumstances under which the President could use military force and imposed various reporting requirements when the¶ President did use force, has been ignored. As I mentioned above, the National Emergencies Act similarly imposed¶ restrictions and reporting requirements on the President's power to declare emergencies, and the International Emergency¶ Economic Powers Act limited the President's power to impose economic sanctions during emergencies. None of these¶ statutes has had much of an impact on the behavior of executives. n61 Finally, after 9/11 the President undertook a¶ program of domestic warrantless surveillance, one that in the view of many commentators clearly violates the Foreign¶ Intelligence Surveillance Act. n62 Public opinion, however, is divided about the program's legality. n63 As of this writing,¶ there seems little prospect that Congress will retaliate; the most likely outcome is some sort of legislative ratification of the¶ program, which means that the President will have effectively annulled the Foreign Intelligence Surveillance Act as well as¶ the other framework statutes governing executive action in emergencies.”

Federal courts don’t solve- opaque decision making and lack of expertise

Kuhn ‘10

[Walter E., Minority Chief Counsel, United States Senate Judiciary Committee, Subcommittee on the ¶ Constitution, Civil Rights and Human Rights. J.D. Duke University School of Law, 2006; ¶ B.A, University of North Carolina at Chapel Hill, 2003. “The Terrorist Detention Review Reform Act: Detention Policy and Political Reality.” Seton Hall Legislative Journal 35.2 ETB]

The current political environment creates incentives for both ¶ Congress and the President to abdicate their responsibility for ¶ legislating detention policy to the judiciary. As a result of Boumediene, ¶ federal courts are more involved in military detention than ever, and they are doing their best to fashion reasonable detention rules in the ¶ absence of guidance by either the Supreme Court or the political ¶ branches of government.17 Federal judges, though, do not have expertise ¶ in military or intelligence matters, and they do not answer to the ¶ electorate. American citizens and soldiers deserve greater input from the ¶ political branches.18 Policymaking by the judiciary in this area leads to ¶ inconsistent, ad hoc decisions that are opaque to the average voter. ¶ While Candidate Obama argued that detention policy was a “legal black ¶ hole” under President Bush,19 the issue has become a political black hole ¶ under President Obama.

### Judicial Globalism

####  Democracy doesn’t work—the democratic peace theory is oversimplified.

Hayes 11—PhD at Georgia Institute of Technology (Jarrod, “The Democratic Peace and the New Evolution of an Old Idea”, European Journal of International Relations, June 10, 2011, http://ejt.sagepub.com/)//AW

A broader critique of the efforts to explain the democratic peace through structural and normative mechanisms lies in the artificial separation of the two. Clearly the separation serves analytical purposes: it serves as tool for isolating dynamics that would be lost in the complexity of international affairs. However, often the literature loses sight of the big picture. As Kahl points out, norms and structure are complimentary (Kahl, 1999: 99). While some effort has been made to integrate the two into a coherent holistic explanation (Oneal et al., 1996; Doyle, 2005; 8Lipson, 2003), these efforts have a tentative quality to them. The Oneal et al article typifies much of the literature: a large N-regression finding that states characterized by economic interdependence, constrained political actors, and norms of non-violent conflict resolution are peaceful. There is very little in the paper, however, that sheds light on how these factors affect the pacific outcome. Doyle’s 2005 article, which builds off his previous work on the democratic peace (Doyle, 1983a; Doyle, 1983b; Doyle, 1986), likewise suggests a linkage between norms and structure. In democracies, according to Doyle, representation (structure) should ensure that wars are fought only for liberal (norms) purposes. However, Doyle speaks only to this point very briefly, and does so in the context of a wide-ranging explanation that implicates a multitude of processes in the eventual democratic peace outcome. How exactly representation ensures liberal wars remains somewhat ambiguous. Clarifications of the relative weight of the various mechanisms or whether they actually operate in the ways Doyle indicates are left to others to resolve. Lipson argues that ‘constitutional’ democracies are peaceful with each other because of stable contracting. That is, through the contracting advantages of democracy—regime stability, audience costs, entrenched procedures—democracies are able to forge “reliable, forward-looking agreements that minimize the dead-weight costs of direct military engagement” (Lipson, 2003: 4). This approach, Lipson argues, takes account of both norms and structure. A careful read of the argument, however, shows an extremely limited discussion of norms. Instead, the argument overwhelmingly focuses on the political structures that give rise to stable, reliable contracting between democracies. Lipson’s major contribution then is to develop an approach that binds together many of the structural explanations rather than building a theory that meaningfully incorporates norms and structure in explanation. However, as with other efforts at reconciling norms and structure, the underlying theoretical framework do not give us a solid basis for understanding how the two fit together. Perhaps a more fundamental problem with the second wave literature lies in the failure of these explanations to account for how threat is constructed. The democratic peace is at its core about threat construction of the lack thereof. Structural explanations have little to say on this point, marking a significant weakness of those approaches. Normative arguments fare better, but do not go far enough; their underlying assumption that threats are self-evident, informed by democratic norms, assumes too much. Both explanations, possibly arising out of their birth nested within large-N studies, are overly deterministic. Security policy, indeed most state policies, arises out of a complicated dynamic between elected officials, bureaucracy, divisions of government, political parties, and individuals. Efforts to explain the democratic peace through a singular cause, to the exclusion of all others, are bound to be found wanting. Several scholars have to varying degrees indicated that the contention between structural and normative explanations is a false one (Ray, 1995). Thus, while the critique is not new, it does bear repeating. Rosato also notes the (implicitly) deterministic nature of structural and normative explanations and while Slantchev and his coauthors argue Rosato misreads the probabilistic nature of democratic peace research, it remains the case that most of the literature is implicitly rather than explicitly probabilistic (Rosato, 2003; Slantchev et al., 2005). Within the second wave and standing apart from much of the literature on the democratic peace, Elman’s edited volume of comparative case studies deserves particular mention (Elman, 1997a). It is, to date, one of the most coherent efforts to utilize case studies to explore the democratic peace. Unfortunately for advocates of the democratic peace, it makes for difficult reading.xiii 9 Skeptical of the claims of the democratic peace, Elman claims that she and her coauthors are “gate crashers at the democratic peace party” (Elman, 1997b: vii). Like the other counterarguments to the democratic peace, the volume focuses on the normative and structural explanations of the democratic peace as the principal explanatory mechanisms. Throughout the nine cases, the monadic approach to the democratic peace is thoroughly disabused and the dyadic proposition is significantly qualified, although it should be said that not all the cases focus on dyadic relations, or even democracies. One section of the book focuses almost exclusively on nondemocratic interactions, for example Malin examines relations between Iraq and Iran from 1975-1980 (Malin, 1997). The volume is not all critical, and some interesting new information is produced—notably the suggestion that shared democratic governance is particularly important to the United States in foreign policy making (Rock, 1997). While Elman’s conclusions take neorealist theorists to task for outright dismissal of the democratic peace regime—an irony given Layne’s effort to do just that in the first case study of the book—she (rightly) points out that the democratic peace program at the time oversimplified explanatory mechanisms and overreached on the resulting conclusions. In particular, she notes the failure of democratic peace research to appreciate the complexity of democracy and its neglect of domestic democratic politics (Elman, 1997a: 483).

#### Democracy doesn’t check war—actually amplifies nationalist tensions—Egypt proves

Joshua Goldstein September 2011 (Writer for Foriegn Policy, "Think Again: War--World Peace Could Be Closer Than You Think"http://www.foreignpolicy.com/articles/2011/08/15/think\_again\_war?page=full)

"A More Democratic World Will Be a More Peaceful One."

Not necessarily. The well-worn observation that real democracies almost never fight each other is historically correct, but it's also true that democracies have always been perfectly willing to fight non-democracies. In fact, democracy can heighten conflict by amplifying ethnic and nationalist forces, pushing leaders to appease belligerent sentiment in order to stay in power. Thomas Paine and Immanuel Kant both believed that selfish autocrats caused wars, whereas the common people, who bear the costs, would be loath to fight. But try telling that to the leaders of authoritarian China, who are struggling to hold in check, not inflame, a popular undercurrent of nationalism against Japanese and American historical enemies. Public opinion in tentatively democratic Egypt is far more hostile toward Israel than the authoritarian government of Hosni Mubarak ever was (though being hostile and actually going to war are quite different things).

#### Democracy doesn’t solve global problems – doesn’t correlate with good governance.

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(Nils and Jan, “A Quality of Government Peace? Bringing the State Back Into the Study of Inter-State Armed Conflict”, The Quality of Government Experiment, University of Gothenburg, September 2010, http://www.qog.pol.gu.se/working\_papers/2010\_20\_Raby\_Teorell.pdf)//AW

That democracies do not wage wars against each other is undoubtedly one of the most widely accepted claims within the study of international relations. Probably less well known is the fact that, when seen from the perspective of the broader literature on domestic consequences of democracy, the democratic peace effect is something of an exception. Despite countless of studies, there are for example no robust evidence linking democracy to economic growth or even to poverty reduction or human development more generally (for an overview, see Rothstein and Teorell 2008). True, democracy usually comes out as a strong predictor of human rights, but democracy should arguably be defined at least partly in terms of key personal integrity rights, so this finding is not all that surprising. This contrasts sharply with the more robust findings linking “good governance” and highquality government institutions — other than democracy — to preferred social, economic and political outcomes. To begin with, economists have started to view dysfunctional government institutions as the most serious obstacle to economic development across the globe (e.g., Hall and Jones 1999; Acemoglu, Johnson, and Robinson 2001, 2002; Easterly and Levine 2003; Rodrik, Subramanian, and Trebbi 2004). Unlike democracy, the quality of government (QoG) factor has also been argued to have substantial effects on a number of important noneconomic phenomena, both at the individual level — such as subjective happiness (Frey and Stutzer 2000; Helliwell 2003; Tavits 2007; Helliwell and Huang 2008), citizen support for government (Anderson and Tverdova 2003; Chang and Chu 2006), and interpersonal trust (Rothstein and Uslaner 2007; Rothstein and Stolle 2008; Rothstein and Eek 2009) — and at the societal level — such as improved public health and environmental sustainability (Holmberg et al. 2009), and state legitimacy (Gilley 2006). In this paper we attempt to bring the study of interstate conflict more in line with this more general literature. More specifically, drawing on dyadic Militarized Interstate Disputes data in 1985-2000, we show that the impact of quality of government on the risk of interstate conflict by large amounts trumps the influence of democracy. We thus find stronger evidence in favour of a quality of government as compared to a democratic peace. These results hold even under control for incomplete democratization, realist claims and geographic constraints. We also find that the relationship between quality of government and peace is robust to controls for the “capitalist peace” (Gartzke 2007), an alternative account that in recent years has been 4 put forward as a challenge to democratic peace theory. Theoretically, we argue that the causal mechanism underlying this finding is that quality of government reduces information asymmetry among potentially warring parties, improves their ability to communicate resolve, and to credibly commit to keep to their promises. By taking into account broader features of the state as a complex organization, we conceive of the quality of government peace as an argument for brining “the state back in” to the study of armed conflict and international relations more generally.

# 1NR

#### The role of the ballot is to use the debate site as a space for the practice of post humanities as an operative displacement of anthropocentrism inherent to the 1AC.

DOMANSKA 2K10 [ewa, adam mickiewicz university, poznon Poland, Stanford, beyond anthropocentrism in historical sciences]

It seems that in contemporary intellectual practice scholars are not connected by methods or theories but by the problems on which they focus their intellectual efforts, primarily because those problems are directly or indirectly related to controlling the life and death (biopolitics, necropolitics) of humans, on the one hand, and protecting “life” on earth, on the other. Protecting life is a “paternalistic” project and we have to be very aware of its results. Some scholars would call it “enlightened anthropocentrism” insomuch as it takes under consideration nature and nonhumans and presupposes that our ethical care for nature and nonhumans comes from our care of and responsibility to humans. This idea would be rejected by scholars working in the paradigm of “deep ecology” or the Gaia theory, who claim that nature or the earth will take care of itself. 14 Also, we should not forget that life (and the survival of species) is not necessarily the highest value for everybody. 15 Obviously, during the process of evolution, some specia become extinct and new ones appear and we should not desperately seek to preserve them. So, the survival paradigm is not by any means an unquestionable absolute. Historians themselves also express their awareness of this problem while asking: “How often do we consider the unwelcome but ineluctable ecological fact that, while life on earth could survive just fine without humans (indeed it would no doubt flourish in our absence), without ants the entire foundation would crumble?” 16 Keeping in mind the limitations of the survival paradigm, let us make the following assumption: the challenge for today’s research is not so much in asking new questions and proposing new theories or methods of analysis, which would spring from current research trends in humanities, but to place the research itself in the context of the emerging paradigm of nonanthropocentric knowledge, or posthumanities. Andrew Pickering called this strategy a “posthumanist displacement of our interpretative frameworks”. 17 Of course, the point is not to eliminate the human being from our studies (of the past) but – as I mentioned above – to displace the human subject from the centre of historical, archaeological and anthropological studies.

## 2NC – Link Work

### War

#### Their discursive claims to war mask the species war because they control what constitutes war - that enables all coercion and genocide.

KOCHI 2K9 [tarik, “species war: law, violence, and animals”, ‘law, culture, and the humanities’, 353-359]

In everyday speech, in the words of the media, politicians, protestors, soldiers and dissidents, the language of war is linked to and intimately bound up with the language of law. That a war might be said to be legal or illegal, just or unjust, or that an act might be called “war” rather than terror or crime, displays aspects of reference, connection, and constitution in which the social meaning of the concepts we use to talk about and understand war and law are organised in particular ways. The manner in which specific terms (i.e. war, terror, murder, slaughter, and genocide) are defined and their meanings ordered has powerful and bloody consequences for those who feel the force and brunt of these words in the realm of human action. In this paper I argue that the juridical language of war contains a hidden foundation – species war. That is, at the foundation of the Law of war resides a species war carried out by humans against non-human animals. At first glance such a claim may sound like it has little to do with law and war. In contemporary public debates the “laws of war” are typically understood as referring to the rules set out by the conventions and customs that define the legality of a state’s right to go to war under international law. However, such a perspective is only a narrow and limited view of what con- stitutes the Law of war and of the relationship between law and war more generally. Here the “Law” of the “Law of war” needs to be understood as involving something more than the limited sense of positive law. The Law of war denotes a broader category that includes differing historical senses of positive law as well as various ethical conceptions of justice, right and rights. This distinction is clearer in German than it is in English whereby the term Recht denotes a broader ethical and juristic category than that of Gesetz which refers more closely to positive or black letter laws.1 To focus upon the broader category of the Law of war is to put specific (positive law) formulations of the laws of war into a historical, conceptual context. The Law of war contains at its heart arguments about and mechanisms for determining what constitutes legitimate violence. The question of what constitutes legitimate violence lies at the centre of the relationship between war and law, and, the specific historical laws of war are merely different juridical ways of setting-out (positing) a particular answer to this question. In this respect the Law of war (and thus its particular laws of war) involves a practice of normative thinking and rule making concerned with determining answers to such questions as: what types of coercion, violence and killing may be included within the definition of “war,” who may legitimately use coercion, violence and killing, and for what reasons, under what circumstances and to what extent may particular actors use coercion, violence and killing understood as war? When we consider the relationship between war and law in this broader sense then it is not unreasonable to entertain the suggestion that at the foundation of the Law of war resides species war.

### Human Rights

#### Their human rights claims are just a Kantian modification of the Westphalian model of legitimate war which masks the species war in order to achieve its idea of the good life

KOCHI 2K9 [tarik, lecturer in law and international security @ U of Sussex, Doctorate in Law from Griffith, “species war: law, violence, and animals”, ‘law, culture, and the humanities’, 353-359]

Modern international humanitarian law both inherits aspects of the Westphalian system and moves beyond it. While international humanitarian or human rights law still relies upon the sovereignty of nation-states and accepts to a limited degree the state’s right to go to war and its internal monopoly upon the legitimacy of violence, each of these forms of right are re-shaped and limited in accordance with a higher standard of legitimacy located around the ideals of international peace and the cosmopolitan concept of “humanity.” By attempting to place “human rights” as a category that stands above or at least challenges the traditional rights of the state, inter- national humanitarian law morally orders war and sets out a cosmopolitan and global conception of the good life. While the category of peace is held onto, survival is displaced by human rights as the central category for deriving the legitimacy of the international order and the legitimacy of war. Of course, the category of survival is not erased completely as the human-animal dis- tinction of species war continues to operate at a subterranean level. One of the first thinkers to sketch out the theoretical justifications for such a re-ordering of inter-state relations and the legitimacy of global violence was Immanuel Kant.32 In proposing a universal moral theory which attempted to equally value all members of humanity, Kant rejected the way in which previous Western intellectual traditions had legitimated particular forms of violence and killing by valuing the lives of Europeans over non-Europeans. Further, Kant challenged the over-valuation of the “life” of the state against the lives of humans in general. In re-thinking the relation between war and law Kant enunciated a form of sovereignty located around the idea of humanity. On the basis of this higher and universal right of humanity Kant’s approach demanded that state action be guided by moral reasoning and moral duty and in this respect Kant asked that the juridical persona of states adopt a distinctly moral persona – states are conceptualized and expected to act as if they are moral persons.33

### Democracy

#### The democratic liberal reform of the aff and perm are the secret extension of the anthropological machine’s injunction to form a human/animal distinction through the imposition to decide. Only total refusal of the aff in favor of the creation of non-essentialist thinking of being solves.

CALARCO 2K6 [Jamming the Anthropological Machine, Matthew, google]

Agamben has argued in Homo Sacer and elsewhere, biopolitics, whether it manifests itself in totalitarian or democratic form, contains within it the virtual possibility of concentration camps and other violent and nihilistic means of producing and controlling bare life. It comes as no surprise, then, that he does not seek to articulate a more precise, more empirical, or less dogmatic determination of the human-animal distinction; rather, he insists that the distinction must be abolished altogether, and along with it the anthropological machine that produces the distinction. Recalling the political consequences that have followed from the modern and pre-modern separation of “human” and “animal” within human existence, Agamben characterizes the task for thought in the following terms: . . . it is not so much a matter of asking which of the two machines [i.e., the modern or pre-modern anthropological machine] . . . is better or more effective—or, rather, less lethal and bloody—as it is of understanding how they work so that we might, eventually, be able to stop them. (O, 38) Now, the critic of Agamben’s argument is likely to see a slippery slope fallacy here. Why is it a necessary or even virtual possibility that every time a human-animal distinction is made that there will be negative (“lethal and bloody”) political consequences for certain human beings? Isn’t the promise of democratic humanism and Enlightenment modernism (the very traditions Agamben would have us leave behind) their foundational commitment to reform, their perfectibility and inclusiveness? Isn’t it precisely humanism that guards against the worst excesses of totalitarianism and human rights abuses? The reader who takes up a careful study of Agamben’s work from this angle, seeking answers to such questions, will be well positioned to grasp its novelty. The overarching thesis of Agamben’s work over the past decade is that there is in fact an “inner solidarity” between democracy and totalitarianism, not at an empirical level, but at a historical and philosophical level (HS, 10). Despite the enormous differences between these two political systems, they are nevertheless united in their investment in the politics of the anthropological machine, and in seeking to separate bare life from properly political life. Even if democratic regimes maintain safeguards designed to prevent many of the totalitarian excesses perpetrated against bare life (and Agamben’s references to Karen Quinlan and others make it clear that democracies are actually far from successful in such matters), they continue unwittingly to create the conditions of possibility for such consequences. This hidden implication of democracy comes to the fore especially in those instances where the rule of law is suspended, for example, in the declarations of sovereign exception to the law or in the refugee crisis that accompanies the decline of nation-States. Such states of exception are, Agamben argues (following Benjamin), becoming more and more the rule in contemporary political life—and the examples one might adduce in support of this thesis are indeed becoming increasingly and troublingly commonplace. It is considerations of this kind that lead Agamben to the conclusion that the genuine political task facing us today is not the reform, radicalization, or expansion of humanism and democracy, but creating an altogether different form of political life. Agamben’s work faces two important challenges at this level. On the one hand, neo-humanists will (justifiably) wonder whether Agamben’s “coming community” and rejection of the humanist tradition in favor of a non-sovereign and non-juridical politics will be better able than current democracies to guard against the injustices he condemns. On the other hand, theorists of a more deconstructionist and Levinasian orientation will likely see Agamben’s project as being constituted by a false dilemma between humanist democracy and a non-essentialist thought of community. Although such theorists would share Agamben’s concerns about the problematic virtual possibilities of democratic politics and its ontology, they would be less sanguine about completely rejecting the democratic heritage. For them, the chief political task would consist in filtering through our democratic inheritance to unlock its radical possibilities, insisting on democracy’s commitment to perfectibility so as to expand democracy’s scope and to open democratic politics to its Other. This would bring democracy and its humanist commitments into relation with another thought of being-with-Others that is similar to Agamben’s coming community. As I noted at the outset of this essay, I believe Agamben offers us some of the most persuasive accounts of the limits of these forms of current political thinking. And there are moments throughout his work where he gives instances of how his alternative thought of politics can be actualized in concrete circumstances. But even the most charitable reading of Agamben’s work must acknowledge that, in terms of the kinds of questions posed by neo-humanists or deconstructionists, much remains to be worked out at both the theoretical and concrete political level, should he wish to engage in such a debate. And if the scope of this discussion were limited to an anthropocentric politics, I would argue that the questions and criticisms raised by neo-humanists and deconstructionists are impossible to circumvent. Humanism, democracy, and human rights are complicated and rich historical constructs, with the intrinsic potential for extensive and remarkably progressive reforms. And yet, if the question of the animal were taken seriously here, and the political discussion were moved to that level as well, the stakes of the debate would change considerably. Who among those activists and theorists working in defense of animals seriously believes that humanism, democracy, and human rights are the sine qua non of ethics and politics? Even those theorists who employ the logic of these discourses in an extensionist manner so as to bring animals within the sphere of moral and political considerability do not seem to believe that an ethics and politics that genuinely respect animal life can be accomplished within the confines of the traditions they use. On this political terrain, neo-humanist arguments concerning the merits of the democratic tradition have little if any weight. Even if one were to inscribe animal rights within a democratic liberatory narrative of expansion and perfectibility, such gestures can only appear tragicomic in light of the massive institutionalized abuse of animals that contemporary democracies not only tolerate but encourage on a daily basis. And in many democracies, the support of animal abuse goes much further. Currently, militant animal activists in the United States who engage in economic sabotage and property destruction in the name of stopping the worst forms of animal abuse are not just criticized (and in many cases without sound justification), but are placed at the top of the list of “domestic terrorists” by the FBI and subject to outrageously unjust penalties and prison sentences. In view of the magnitude of such problems, animal activists are currently embroiled in a protracted debate over the merits of a reformist (welfarist) versus a stricter and more radical rightist (incrementalist) approach to animal issues, and over which approach is more effective in the contemporary political and legal contexts. However, the real question seems to me to lie elsewhere—precisely in the decision to be made between the project of radicalizing existing politics to accommodate non-human life (neo-humanism and deconstruction) and that of working toward the kind of coming politics advocated by Agamben that would allow for an entirely new economy of human/animal relations. While Agamben’s thought is sometimes pejoratively labeled by critics as utopian inasmuch as it seeks a complete change in our political thinking and practices without offering the concrete means of achieving such change, from the perspective of the question of the animal, the tables can easily be turned on the critics. Anyone who argues that existing forms of politics can be reformed or radicalized so as to do justice to the multiplicity of forms of non-human life is clearly the unrealistic and utopian thinker, for what signs or sources of hope do we have that humanism and democracy (both of which are grounded in an agent-centered conception of subjectivity) can be radicalized or reformed so as to include and give direct consideration to beings beyond the human?[3] Thus, when we consider the ethico-political status of animal life, the necessity for working toward a form of politics beyond the present humanist, democratic, and juridical orders becomes clear beyond any shadow of a doubt.

## 2NC – Permutation Debate

#### Permutation links more: it directs criticism towards politics – that excludes bare life in favor of the voice of the politically qualified citizen.

HUDSON 2K4 [Laura, The Political Animal: Species-Being and Bare Life, mediations journal, http://www.mediationsjournal.org/files/Mediations23\_2\_04.pdf]

The rise of environmentalism, deep ecology, and animal rights can be seen as effects of this inability of law, or the Law, to distance the “natural world” as a state outside itself. **Natural objects reappear within the political realm not as political actors but as markers of bare life.** **Sovereignty, in seeking to establish a political life separate from the state of nature, produces both political life as the life proper to the citizen (the “good life”) and bare life**, which occupies a space in between bios and zoē, evacuated of meaning. **The state of nature is not separate from political life but a state that exists alongside political life, as a necessary corollary of its existence. Political life is alienation from an imagined state of nature that we cannot access as human beings because it appears only in shadow form as bare life. The state of exception is that which defines which lives lack value, which lives can be killed without being either murdered or sacrificed.** Agamben’s examples of the inextricable link between political and bare life focus on the limit cases of humanity rather than the ideal, providing an analysis of precisely the cases that prove problematic in Ferry’s liberal humanism. The exception, as that which proves the rule, cannot be avoided. It is necessary to look to the figure of the refugee, the body of the “overcomatose” or the severely mentally impaired, and, under the Third Reich, the life of the Jew to see how the law fails in the task Ferry sets for it. **These cases demonstrate the zone of indistinction that Agamben elaborates as the zone of “life that does not deserve to live**.” The refugee demonstrates the necessity of a link between nation and subject; **refugees are no longer citizens and, as such, lack a claim to political rights: “In the system of the nation-state, the so-called sacred and inalienable rights of man show themselves to lack every protection and reality at the moment in which they can no longer take the form of rights belonging to citizens of a state**.”[15] **Confronted with the figure of the refugee, human rights are faced with their hidden ground in national origin, where, as Agamben notes, the key term is birth: men are born free, invoking the natural codes from which law was to separate us. This freedom is, in actuality, a function of citizenship and incorporation in the nation-state rather than a fact of being human: “citizenship names the new status of life as origin and ground of sovereignty and, therefore, literally identifies** … les membres du souverain, **‘the members of the sovereign.’”[16] This makes the link between that which is proper to the nation and that which is proper to the citizen the determinant of the zone of sacred life: those who do not fulfill the role of the citizen are no longer guaranteed protection or participation in political life, their so-called human rights void in the absence of national identity. The refugee or refugees as a group have a claim only to bare life, to being kept alive, but have no political voice with which to demand the rights of the citizen.** Agamben, while noting the same trend toward politicizing natural life that concerns Ferry, demonstrates that this politicization is already contained within the structure of politics itself. **This corresponds to the position of animals in human society: the exemplar of the limit case, they have always existed in the state of exception that founds the political. There is thus a connection between the plight of the refugee and that of the animal: neither participates directly in the political, though both are absolutely subject to political decisions in which they have no voice. The establishment of a realm outside the political, where lives have no value and thus may be killed, is marked by the difference between the human and the animal.**

#### Perm links more: holding out for reform is worse because it disavows the unethical violence in their political paradigm. Only the alt solves.

KOCHI & ORDAN 2K8 [tarik and noam, queen’s university and bar llan university, “an argument for the global suicide of humanity”, vol 7. no. 4., bourderlands e-journal]

The banality of action hits against a central problem of social-political action within late modernity. In one sense, the ethical demand to respond to historical and present environmental destruction opens onto a difficulty within the relationship between moral intention and autonomy. While an individual might be autonomous in respect of moral conscience, their fundamental interconnection with and inter- dependence upon social, political and economic orders strips them of the power to make and act upon truly autonomous decisions. From this perspective it is not only the modern humanist figures such as Hawking who perpetuate present violence and present dreams of colonial speciesist violence in the future. It is also those who might reject this violence but whose lives and actions are caught up in a certain complicity for this violence. From a variety of political standpoints, it would seem that the issue of modern, autonomous action runs into difficulties of systematic and institutional complicity. Certainly both individuals and groups are expected to give up a degree of autonomy in a modern liberal-democratic context. In this instance, giving up autonomy (in the sense of autonomy as sovereignty) is typically done in exchange for the hope or promise of at some point having some degree of control or influence (i.e. via the electoral system) over government policy. The price of this hope or promise, however, is continued complicity in government-sanctioned social, political and economic actions that temporarily (or in the worst case, eternally) lie beyond the individual’s choice and control. The answer to the questions of whether such complicity might ever be institutionally overcome, and the problems of human violence against non-human species and ongoing environmental destruction effectively dealt with, often depends upon whether one believes that the liberal hope or promise is, either valid and worthwhile, or false and a sham. [8]

## 2NC – Impact Work

#### K turns the case – their impact scenarios are just extensions of the human-nonhuman divide. Their approach normalizes the violence they try to stop.

KOCHI 2K9 [tarik, lecturer in law and international security @ U of Sussex, Doctorate in Law from Griffith, “species war: law, violence, and animals”, ‘law, culture, and the humanities’, 353-359]

This reflection need not be seen as carried out by every individual on a daily basis but rather as that which is drawn upon from time to time within public life as humans inter-subjectively coordinate their actions in accordance with particular enunciated ends and plan for the future.21 In this respect, the violence and killing of species war is not simply a question of survival or bare life, instead, it is bound up with a consideration of the good. For most modern humans in the West the “good life” involves the daily killing of animals for dietary need and for pleasure. At the heart of the question of species war, and all war for that matter, resides a question about the legitimacy of violence linked to a philosophy of value.22 The question of war-law sits within a wider history of decision making about the relative values of different forms of life. “Legitimate” violence is under-laid by cultural, religious, moral, political and philosoph- ical conceptions about the relative values of forms of life. Playing out through history are distinctions and hierarchies of life-value that are exten- sions of the original human-animal distinction. Distinctions that can be thought to follow from the human-animal distinction are those, for example, drawn between: Hellenes and barbarians; Europeans and Orientals; whites and blacks; the “civilized” and the “uncivilized”; Nazis and Jews; Israeli’s and Arabs; colonizers and the colonized. Historically these practices and regimes of violence have been culturally, politically and legally normal- ized in a manner that replicates the normalization of the violence carried out against non-human animals. Unpacking, criticizing and challenging the forms of violence, which in different historical moments appear as “normal,” is one of the ongoing tasks of any critic who is concerned with the question of what war does to law and of what law does to war? The critic of war is thus a critic of war’s normalization.

#### The reason they think nuclear war outweighs is because of their concept of humanity as ordered and non-humanity as not ordered. Their impact calculus ignores endless genocides in order to try and fail to reform humanism. Instead, we need to calculate human and non-human animal lives equally – that requires total rejection.

KOCHI & ORDAN 2K8 [tarik and noam, queen’s university and bar llan university, “an argument for the global suicide of humanity”, vol 7. no. 4., bourderlands e-journal]

Putting aside the old, false assumptions of a teleological account of history, social-environmental revolution is dependent upon widespread political action which short-circuits and tears apart current legal, political and economic regimes. This action is itself dependent upon a widespread change in awareness, a revolutionary change in consciousness, across enough of the populace to spark radical social and political transformation. Thought of in this sense, however, such a response to environmental destruction is caught by many of the old problems which have troubled the tradition of revolutionary socialism. Namely, 3how might a significant number of human individuals come to obtain such a radically enlightened perspective or awareness of human social reality (i.e. a dialectical, utopian anti-humanist ‘revolutionary consciousnesse’) so that they might bring about with minimal violence the overthrow of the practices and institutions of late capitalism and colonial-speciesism? Further, how might an individual attain such a radical perspective when their life, behaviours and attitudes (or their subjectivity itself) are so moulded and shaped by the individual’s immersion within and active self-realisation through, the networks, systems and habits constitutive of global capitalism? (Hardt & Negri, 2001). While the demand for social-environmental revolution grows stronger, both theoretical and practical answers to these pressing questions remain unanswered. Both liberal and social revolutionary models thus seem to run into the same problems that surround the notion of progress; each play out a modern discourse of sacrifice in which some forms of life and modes of living are set aside in favour of the promise of a future good. Caught between social hopes and political myths, the challenge of responding to environmental destruction confronts, starkly, the core of a discourse of modernity characterised by reflection, responsibility and action. Given the increasing pressures upon the human habitat, this modern discourse will either deliver or it will fail. There is little room for an existence in between: either the Enlightenment fulfils its potentiality or it shows its hand as the bearer of impossibility. If the possibilities of the Enlightenment are to be fulfilled then this can only happen if the old idea of the progress of the human species, exemplified by Hawking’s cosmic colonisation, is fundamentally rethought and replaced by a new form of self-comprehension. This self-comprehension would need to negate and limit the old modern humanism by a radical anti-humanism.

#### Even full detonation of all nuclear arsenals would not destroy the biosphere.

Wang 2k9 [brian, a long time futurist (he won second place in the Honeywell University Futurist contest, Member of the Center for Responsible Nanotechnology taskforce. Advisor to the Nanoethics Group. Director of Research for the Lifeboat Foundation, <http://nextbigfuture.com/2009/02/nuclear-war-effects-and-battlestar.html>]

Expending the current level or even the highest nuclear arsenals that we have ever had would do nothing to the long term survival of the biosphere based on radiation and fallout. The world is too big. The stuff settles out and the most dangerous stuff has a short life. The long life stuff is long lived because it is giving off low energy level of radiation.  That is why the long term debate about nuclear war is about altering the climate or ozone in a lasting way. Plenty of atmospheric big nuclear tests have been done and the biosphere can take it. Killing a biosphere with nukes would take lot more nukes and radiation would not be the main and lasting problem ever after 2000 years.

#### And, nuclear war will be on par with previous mass extinctions – radiation only risks rapid mutation enabling evolution for populations who survive.

Phillips 2k1 [alan, peace magazine, v17, n1,p13, nuclear winter revisited, <http://archive.peacemagazine.org/v17n1p13.htm>]

Altogether, nuclear winter would be an ecological disaster of the same sort of magnitude as the major extinctions of species that have occurred in the past, the most famous one being 65 million years ago at the Cretaceous extinction. Of all the species living at the time, about half became extinct. The theory is that a large meteor made a great crater in the Gulf of Mexico, putting a trillion tons of rock debris into the atmosphere. That is a thousand times as much rock as is predicted for a nuclear war, but the soot from fires blocks sunlight more effectively than rock debris. In nuclear winter there would also be radioactive contamination giving worldwide background radiation doses many times larger than has ever happened during the three billion years of evolution. The radiation would notably worsen things for existing species, though it might, by increasing mutations, allow quicker evolution of new species (perhaps mainly insects and grasses) that could tolerate the post-war conditions. (I should just mention that there is no way the radioactivity from a nuclear war would destroy "all life on earth." People must stop saying that. There will be evolution after a war, but it may not include us).3. even if they win that it does kill the biosphere, they have conceeded the bare life portions of our criticism. the paradigm of survival of the species abandons the form of bare life. this is an unethical arrangement of the political which makes the domination, genocide, and continual suffering for forms of life deemed unqualified. that’s both pieces of 1nc kochi and ordan evidence and all the impact work above.