# 1NC

### T – Substantial

#### A. Interpretation: substantially increase restrictions means big and plural

Words & Phrases 5 (40B, p. 329)

N.H. 1949. -**The word "substantially"** as used in provision of Unemployment Compensation Act that experience rating of an employer may transferred to' an employing unit which acquires the organization, -trade, or business, or "substantially" all of the assets thereof, **is 'an elastic term which does not include a definite, fixed amount of percentage, and the transfer does not have to be 100 per cent but** cannot be less than 90 per cent **in the ordinary** **situation**. R.L c. 218, § 6, subd. F, as added by Laws 1945, c. 138, § 16.-Auclair Transp. v. Riley, 69 A.2d 861, 96 N.H. l.-Tax347.1.

#### Its plural

Wiktionary.com No Date

restriction (plural restrictions)

The act of restricting, or the state of being restricted.

A regulation or limitation that restricts.

#### Even if imprecise, gut check means vote neg

Hartmann 7– Judge, Hong Kong (IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF FIRST INSTANCE, 8/20, http://legalref.judiciary.gov.hk/lrs/common/ju/ju\_frame.jsp?DIS=58463&currpage=T

 The word ‘substantial’ is not a technical term nor is it a word that lends itself to a precise measurement.  In an earlier judgment on this issue, that of S. v. S. [2006] 3 HKLRD 251, I said that it is not a word —

“… that lends itself to precise definition or from which precise deductions can be drawn.  To say, for example, that ‘there has been a substantial increase in expenditure’ does not of itself allow for a calculation in numerative terms of the exact increase.  It is a statement to the effect that it is certainly more than a little but less than great.  It defines, however, a significant increase, one that is weighty or sizeable.”

### Anthro K

#### The 1AC ignores that racism is merely one amongst many tools of axiological anthropocentrism whereby violence can always be justified when applied to racially inferior groups. Only a critique which focuses on rejecting subhuman thinking can contest the myriad forms of racism.

Deckha 2k10 [Maneesha, faculty of law, university of Victoria, “it’s time to abandon the idea of human rights”, the scavenger, dec. 10]

While the intersection of race and gender is often acknowledged in understanding the etiology of justificatory narratives for war, the presence of species distinctions and the importance of the subhuman are less appreciated. Yet, the race (and gender) thinking that animates Razack’s argument in normalizing violence for detainees (and others) is also centrally sustained by the subhuman figure. As Charles Patterson notes with respect to multiple forms of exploitation: Throughout the history of our ascent to dominance as the master species, our victimization of animals has served as the model and foundation for our victimization of each other. The study of human history reveals the pattern: first, humans exploit and slaughter animals; then, they treat other people like animas and do the same to them. Patterson emphasizes how the human/animal hierarchy and our ideas about animals and animality are foundational for intra-human hierarchies and the violence they promote. The routine violence against beings designated subhuman serves as both a justification and blueprint for violence against humans. For example, in discussing the specific dynamics of the Nazi camps, Patterson further notes how techniques to make the killing of detainees resemble the slaughter of animals were deliberately implemented in order to make the killing seem more palatable and benign. That the detainees were made naked and kept crowded in the gas chambers facilitated their animalization and, in turn, their death at the hands of other humans who were already culturally familiar and comfortable with killing animals in this way. Returning to Razack’s exposition of race thinking in contemporary camps, one can see how subhuman thinking is foundational to race thinking. One of her primary arguments is that race thinking, which she defines as “the denial of a common bond of humanity between people of European descent and those who are not”, is “a defining feature of the world order” today as in the past. In other words, it is the “species thinking” that helps to create the racial demarcation. As Razack notes with respect to the specific logic infusing the camps, they “are not simply contemporary excesses born of the west’s current quest for security, but instead represent a more ominous, permanent arrangement of who is and is not a part of the human community”. Once placed outside the “human” zone by race thinking, the detainees may be handled lawlessly and thus with violence that is legitimated at all times. Racialization is not enough and does not complete their Othering experience. Rather, they must be dehumanized for the larger public to accept the violence against them and the increasing “culture of exception” which sustains these human bodily exclusions. Although nonhumans are not the focus of Razack’s work, the centrality of the subhuman to the logic of the camps and racial and sexual violence contained therein is also clearly illustrated in her specific examples. In the course of her analysis, to determine the import of race thinking in enabling violence, Razack quotes a newspaper story that describes the background mentality of Private Lynndie England, the white female soldier made notorious by images of her holding onto imprisoned and naked Iraqi men with a leash around their necks. The story itself quotes a resident from England’s hometown who says the following about the sensibilities of individuals from their town: To the country boys here, if you’re a different nationality, a different race, you’re sub-human. That’s the way that girls like Lynndie England are raised. Tormenting Iraqis, in her mind, would be no different from shooting a turkey. Every season here you’re hunting something. Over there they’re hunting Iraqis. Razack extracts this quote to illustrate how “race overdetermined what went on”, but it may also be observed that species “overdetermined what went on”. Race has a formative function, to be sure, but it works in conjunction with species difference to enable the violence at Abu Ghraib and other camps. Dehumanization promotes racialization, which further entrenches both identities. It is an intertwined logic of race, sex, culture and species that lays the foundation for the violence.

#### 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?

### Amendment CP

#### TEXT: The United States Congress should pass and at least three-fourths of the states should ratify a constitutional amendment stating that the preventative detention of material witnesses in the so-called “war on terror” is unconstitutional.

#### 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.

#### Judicial interpretation destroys liberty and prevents political engagement

Twight 2K

(Charlotte Twight, Research Fellow at The Independent Institute, Professor of Economics at Boise State University, 10-1-2K “Constitutional Counterrevolution” http://www.independent.org/publications/article.asp?id=277)

As I see it, here is what happened. During the twentieth century, legislators, Supreme Court judges, and executive branch officials began to perfect techniques for deflecting and curtailing people’s resistance to actions that increased the power of the central government. You and your contemporaries well understood the dangers of overreaching government and, through the Constitution, tried to limit its power. But living in a society so recently chafing under British rule, a young nation whose people yearned for freedom, it would have been difficult to imagine how America’s own elected and appointed officials—without triggering public censure and usually without amending the Constitution—might take systematic actions to erode the explicit constitutional limits on their power that you designed. Yet that is exactly what occurred. The techniques that emerged involved a bevy of government actions sharing one defining characteristic: they increased other people’s costs of resisting government expansion. In each case, government officials made it more difficult or costly for people to perceive, or take action to resist, federal power-expanding measures. It is what I call “political transaction-cost manipulation”: government officials’ deliberate alteration of people’s costs of undertaking collective political action in matters that affect the scope of government authority. [1] These federal actions have included misrepresenting the nature and consequences of government action, proceeding incrementally, concealing the cost of government actions, tying controversial measures to more popular legislative bills, hiding unpopular provisions in omnibus bills, concentrating the benefits and dispersing the costs of government action, changing the Constitution through the back door of the Supreme Court rather than by constitutional amendment, and myriad analogous strategies. As I’ll explain in a minute, diverse efforts in the twentieth century to expand the federal government’s power all have involved such strategies—implying that initial public acquiescence to new government institutions often did not reflect true public consensus. Once in place, however, institutions exercising new federal powers subsequently channeled ideological change, and nurtured special interests, in ways that supported the new regime. Consider a few examples. The first one is sure to infuriate you, James. Remember the care you took in providing for the constitutional amendment process? You wisely and deliberately made it very cumbersome, trying to assure that the Constitution’s provisions could not be altered without great effort and widespread agreement on the desirability of the changes. In short, you hoped to make it very costly for people to alter constitutionally established limits on the central government’s power. During the twentieth century, however, the U.S. Supreme Court often served to bypass the amendment process. Increasingly, Supreme Court decisions changed the Constitution’s long-established meaning without benefit of constitutional amendment, reinterpreting the document—sometimes literally changing the definition of its words—to broaden the central government’s powers far beyond what you and the other Founders envisioned. Confronted with such unilateral action by the Supreme Court, how could people then preserve their liberty? Of course, they themselves could seek a constitutional amendment to spell out more concretely the original meaning of the Constitution and thereby bind the Supreme Court. But the cumbersome amendment process, meant to constrain those who would change fundamental constitutional protections, then impeded those who desired to preserve the original meaning of the Constitution. In other words, the political transaction costs that you intended to be a barrier to those who desired to change the Constitution’s substance instead served as a barrier to those who desired to uphold the Constitution’s original substance. It is a classic type of political transaction-cost manipulation. The Commerce Clause One example is the Supreme Court’s reinterpretation of the Constitution’s interstate commerce clause in a 1942 case called Wickard v. Filburn. As you recall, you and the other drafters gave the federal government power over interstate commerce (“commerce among the several States”) to make sure that the individual states did not erect trade barriers against one another. Commerce within the separate states, intrastate commerce, was beyond the central government’s authority. In Wickard, however, the U.S. Supreme Court proclaimed that the central government had power¶ to regulate even the wheat that an individual wheat farmer grew on his own land, within a single state, for his own family’s consumption. The Court’s rationale was that if the farmer had not grown that wheat for his family’s consumption, he would have had to purchase wheat that might have moved in interstate commerce. Since locally produced and consumed wheat ¶ “competes with” wheat moving in commerce, this purely local activity was deemed to affect interstate commerce and thus justify federal regulation. The Supreme Court thereby threw the constitutional doors wide open, allowing the central¶ government to embed itself into virtually any economic activity, no matter how local. Throughout the twentieth century,¶ this key tactic of judicial reinterpretation allowed the Supreme Court to effectively trump the constitutional amendment process that you designed. If people wanted to preserve the limits on central government power that you wisely created, the defenders of the original Constitution—not its opponents—would have to undergo the high transaction-cost process of constitutional amendment. With the deck stacked against such a costly undertaking, no amendment materialized to shield intrastate commerce or other realms from the federal government’s growing regulatory reach.

#### Political engagement key to solve all impacts from environmental destruction to imperialism

BOGGS 2K

PF POLITICAL SCIENCE – SOUTHERN CALIFORNIA, [CAROL, THE END OF POLITICS, 250-1]

But it is a very deceptive and misleading minimalism. While Oakeshott debunks political mechanisms and rational planning as either useless or dangerous, the actually existing power structure replete with its own centralized state apparatus, institutional hierarchies, conscious designs, and indeed, rational plans- remains fully intact, insulated from minimalistic critique. In other words, ideologies and plans are perfectly acceptable for elites who preside over established governing systems, but not for ordinary citizens or groups to challenge the status quo. Such one sided minimalism gives carte-blanche to elites who naturally desire as much space to maneuver as possible the flight form “abstract principles” rules out ethical attacks on injustices that many pervade the status quo (slavery or imperialistic wars for example) insofar as those injustices might be seen as too embedded in the social and institutional of the matrix of the time to be the target of oppositional political action. If politics is reduced to nothing other than a process of everyday muddling-through then people are condemned to accept the harsh realities disgusting and demeaning way in which that money is spent are testimony to the mounting corruptions of politics and government.” 17 Given such growing corruption, it follows that the often-heard appeals to “realism” and pragmatism- so typical of Oakeshott-style discourse- can only lead right back to established modes of doing business. What this suggests, for example, is that any hope of “solving” deep social problems will have to advanced in a minimalistic framework that will never go further tepid social policies that leave business interests totally unaffected, or cosmetic reforms, or the “greening ” of huge corporations that simply want to profit off environmentally-critical goods, and so forth. A much needed radical agenda geared to sustainable, egalitarian, and ecologically balanced forms of production and consumption is automatically ruled out by the minimalistic scenario. A thorough going revival of politics-one that vigorously questions and seeks to go beyond the routinized liberal pragmatism favored by Oakshott-is a precondition for the transcending this political predicament. Of course, any distinctly political imperative flies in the face of a deeply antipolitical culture where politics has such an unsavory association with money corruption, interest peddling, scandals, PACs, bureaucracy, and largely irrelevant campaign spectacles- where indeed politics has been reduced to a farcial representation of its most enduring motifs. For the most part people in the united state normal politics means little more than false promises and empty discourses that might serve to improve people’s lives. The concept of politics that informs this book, however, holds out prospects for a more empowering, participatory, transformative legacy compatible with an enlarged public sphere and the subversion of corporate hegemony. While this concept imputes an ethical and visionary dimension to politics, it also points toward the matter of strategic necessity in that politics constitutes the only (potential) countervailing power against corporate domination. Localized, and extrapolitical opposition can lay the groundwork for popular movement , but alone (in the absence of more generalized structural mediations) such opposition will never lead to large scale societal change. Notwithstanding Oakeshott, therefore, an imminent retrieval of politics becomes an urgent imperative at a time when destructive global forces cannot be tamed by a pragmatic, muddling-through modus operandi.

### Deference DA

#### 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.

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.

#### 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.

### Test Case Spec

#### A. Interpretation: The courts have a case and controversy requirement, it would be impossible for the court to just come out and rule

Benjamin ‘99

(Stuart, prof at University of San Diego Law School, “Stepping Into the Same River Twice: Rapidly Changing Facts and the Appellate Process,” 78 Texas L. Rev. 269, L/N)

 Congress could attempt to repass the statute, but it appears that such an action would have no legal effect. [63](http://livepage.apple.com/) At the same time, it would be  [\*286]  problematic for a court, with no enforcement or other proceeding before it, simply to announce that one of its precedents was invalid. Such an action would seem to run afoul of the constitutional requirement that a federal court decide only "Cases" or "Controversies." [64](http://livepage.apple.com/) A court cannot declare what the law is if the parties requesting the declaration are not part of an actual controversy, much less declare what the law is when there are no parties before it at all. That knocks out two branches of government, leaving the executive as the remaining candidate to instigate a reexamination of an invalidated law that may, through changes in facts, have become constitutional. This possibility has its own complications, [65](http://livepage.apple.com/) but they are probably resolvable. [66](http://livepage.apple.com/) It bears note, though, that even a relatively small  [\*287]  probability that we would lack a mechanism to reconsider an opinion based on outdated facts raises the disturbing specter of a ruling having continuing force but no factual basis.

#### B. Violation: The affirmative plan text has a controversy but no case

#### Vote neg on presumption- lack of case and controversy means the court will dismiss the suit- affirmative plan never happens

King ‘00

(J. Brian, law clerk to Chief Judge Richard A. Schell, US District Court for the Eastern District of Texas 2000-01, “Jurisprudential Analysis of Justiciability,” 10 Kan. J.L. & Pub. Pol’y 217, L/N)

Without a judicial case or controversy, the federal courts, being part of the limited federal government, lack the authority to hear and decide a matter, and thus, must dismiss the suit. Therefore, in a jurisprudential analysis of justiciability under Article III, the key concept, the one upon which all justiciability cases turn, is a judicial case or controversy. Exactly what the Founders meant by the requirement of a judicial case or controversy has been debated since the founding. Professor Nichol has exclaimed: "To the great surprise of all but the most cynical, after over 200 years we still have no real idea what the term 'case or controversy' means." [10](http://livepage.apple.com/) Admittedly, the concept has at times seemed amorphous. Yet using a jurisprudential analysis can help limit and define the concept of a judicial case or controversy. Using the set theory, both the characteristics of a judicial case or controversy and the rationales behind the requirement of a judicial case or controversy will be identified and described below. The goal of this part of the article is not to teach the law of federal courts, but to uncover a more structured way to analyze justiciability under Article III by defining a judicial case or controversy and identifying the theories behind the definition. [11](http://livepage.apple.com/) The law of justiciability is more than just an amalgamation of rules and exceptions that are often criticized as being manipulated by judges; it is a structured analysis with the definition of a judicial case or controversy at the center.

### Case

#### 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.

#### Supreme court refuses to uphold lower court restriction on war powers

Vladeck ’11

(Steven, professor of law and associate dean for scholarship at American University Washington College of Law

http://www.americanbar.org/publications/human\_rights\_magazine\_home/human\_rights\_vol38\_2011/human\_rights\_winter2011/supreme\_court\_war\_on\_terrorism\_separation\_of\_powers.html)

And that is where a more nuanced view of the Supreme Court’s terrorism jurisprudence paints a far more equivocal picture of the separation of powers after 9/11. For as much as the Court has asserted its power in the detainee cases, it has declined to exercise that power once those detentions have concluded, no matter the gravity of the plaintiff’s allegations of misconduct. Thus, in El-Masri v. United States, 552 U.S. 947 (2007), the Court denied certiorari to review the Fourth Circuit’s sweeping endorsement of the state secrets privilege as precluding a damages suit arising out of the “extraordinary rendition” program, even though it now seems clear that El-Masri’s was a case of mistaken identity. The Court also turned away the en banc Second Circuit’s refusal to recognize a cause of action for Maher Arar, a Canadian citizen who alleged that, because of egregious misconduct by federal officials, he, too, was subjected to extraordinary rendition, leading to his torture while in Syrian custody. See Arar v. Ashcroft, 130 S. Ct. 3409 (2010). In a similar vein, the Court left intact a D.C. Circuit decision holding that former Guantanamo detainees were not entitled to damages for any mistreatment they received during their detention. See Rasul v. Myers, 130 S. Ct. 1013 (2009). And just this past term, the Court refused to review a 6–5 decision by the en banc Ninth Circuit, also relying on the state secrets privilege to dismiss a lawsuit against Boeing subsidiaries arising out of its alleged involvement in extraordinary rendition. See Mohamed v. Jeppesen Dataplan, Inc., 179 L. Ed. 2d 1235 (2011).¶ After-the-fact challenges to detention are hardly the only category of terrorism disputes in which the Court has consistently refused to intervene. Among many others, the Court also has declined to consider challenges to (1) the warrantless wiretapping program undertaken by the Bush administration, see ACLU v. NSA, 552 U.S. 1179 (2008); (2) the expansive interpretation of the government’s authority to detain material witnesses sanctioned by the Second Circuit, see Awadallah v. United States, 543 U.S. 1056 (2005); and (3) the first-ever decision by the Foreign Intelligence Surveillance Court of Review, holding that the USA PATRIOT Act was constitutional in relaxing the standard for whether evidence obtained through FISA warrants could be used in criminal investigations, see ACLU v. United States, 538 U.S. 920 (2003). Even where the Court has been the most assertive, as in the Guantanamo detainee cases, it has turned away repeated attempts to review post-Boumediene merits decisions, see, e.g., al-Bihani v. Obama, 131 S. Ct. 1814 (2011), notwithstanding substantial charges by the petitioners that the D.C. Circuit’s case law is undermining the Supreme Court’s mandate.¶ In all, then, for as active as the Court has been with respect to separation-of-powers issues in the war on terrorism, it has been surprisingly quiet on the merits. Indeed, even where the Court has stepped in to review a nonmilitary detention terrorism case—as in Ashcroft v. Iqbal, 129 S. Ct. 1937 (2009); Holder v. Humanitarian Law Project, 130 S. Ct. 2705 (2010); and Ashcroft v. al-Kidd, 131 S. Ct. 2074 (2011)—the best explanation for why the Court so intervened is that, unlike every other case noted above, the government lost in the court of appeals (and sought certiorari). Otherwise, the Supreme Court has practically stayed out of the war on terrorism, except in cases where the lower-court decision appeared to jeopardize the institutional role of the federal courts more generally.

####  Supreme court will strike down the aff

Yoo 2K

John (Professor of Law, University of California at Berkeley School of Law) 1 Chi. J. Int'l L. 355

As they consistently have throughout the postwar period, the federal courts refused to adjudicate the constitutionality of the President's unilateral use of force or his violation of the WPR's terms. During the Kosovo bombing campaign, twenty-seven House members sued President Clinton on the ground that he had usurped Congress's power to declare war and infringed the WPR by conducting air strikes without congressional authorization. n16 Dismissing the action, the District Court for the District of Columbia found that the legislators did not have Article III standing to challenge the President's action because Congress, as a whole, had not acted to terminate the intervention. n17 Campbell v Clinton followed in the wake of earlier decisions of the DC District Court, including two opinions rendered during the Persian Gulf War that had found similar challenges nonjusticiable. n18 On appeal, Judge Silberman wrote for a unanimous panel of the DC Circuit that the congressional plaintiffs in Campbell lacked standing. Judge Silberman also wrote separately to make clear his conclusion that inter-branch struggles over war powers present nonjusticiable political questions. Judicial reluctance to enter the fray is consistent with historical practice, as the Supreme Court has never agreed to reach the merits of any challenge to presidential war-making authority abroad. n19

# 2NC

## AT: Gendered Language K

#### We apologize – we shouldn’t lose because Fielding was perceived as saying something he didn’t mean to

Steven **Pinker, 2002**. Harvard College Professor and Johnstone Family Professor in the Department of Psychology at Harvard University. Until 2003, he taught in the Department of Brain and Cognitive Sciences at MIT. He conducts research on language and cognition. The Language Instinct: How the Mind Creates Language. 200. P.45-46

In much of our social and political discourse, **people simply assume that words determine thoughts**. Inspired by Orwell's essay "Politics and the English Language," **pundits accuse governments of manipulating our minds with euphemisms** like pacification (bombing), revenue enhancement (taxes), and nonretention (firing) Philosophers argue that since animals lack language, they must also lack consciousness—Wittgenstein wrote, "A dog could not have the thought 'perhaps it will rain tomorrow' "—and therefore they do not possess the rights of conscious beings. **Some feminists blame sexist thinking on sexist language**, like the use of he to refer to a generic person. Inevitably, reform movements have sprung up. Many replacements for he have been suggested over the years, including E, hesh, po, tey, co, jhe, ve, xe, he'er, thon, and na. The most extreme of these movements is General Semantics, begun in 1933 by the engineer Count Alfred Korzybski and popularized in long-time best-sellers by his disciples Stuart Chase and S. I. Hayakawa. (This is the same Haya-kawa who later achieved notoriety as the protest-defying college president and snoozing U.S. senator.) General Semantics lays the blame for human folly on insidious "semantic damage" to thought perpetrated by the structure of language. Keeping a forty-year-old in prison for a theft he committed as a teenager assumes that the forty-year-old John and the eighteen-year-old John are "the same person," a cruel logical error that would be avoided if we referred to them not as John but as John 1972 and John 1994, respectively. The verb to be is a particular source of illogic, because it identifies individuals with abstractions, as in Mary is a woman, and licenses evasions of responsibility, like Ronald Reagan's famous nonconfession Mistakes were made. One faction seeks to eradicate the verb altogether. And **supposedly there is a scientific basis for these assumptions: the famous Sapir-Whorf hypothesis of linguistic determinism**, stating that people's thoughts are determined by the categories made available by their language, and its weaker version, linguistic relativity, stating that differences among languages cause differences in the thoughts of their speakers. People who remember little else from their college education can rattle off the factoids: the languages that carve the spectrum into color words at different places, the fundamentally different Hopi concept of time, the dozens of Eskimo words for snow. **The implication is heavy: the foundational categories of reality are not "in" the world but are imposed by one’s culture**(and hence can challenged, perhaps accounting for the perennial appeal of the hypothesis to undergraduate sensibilities). **But it is wrong, all wrong**. **The idea that thought is the same thing as language is** an example of what can be called a **conventional absurdity**: a statement that goes against all common sense but that everyone believes because they dimly recall having heard it somewhere and because it is so pregnant with implications. (The "fact" that we use only five percent of our brains, that lemmings commit mass suicide, that the Boy Scout Manual annually outsells all othefr books, and that we can be coerced into buying by subliminal messages arc other examples.) Think about it. **We have all had the experience of uttering or writing a sentence, then** stopping and **realizing that it wasn't exactly what we meant to say**. To have that feeling, there has to be a "what we meant to say" that is different from what we said. **Sometimes it is not easy to find any words that properly convey a thought**. **When we hear or read, we usually remember the gist, not the exact words, so there has to be such a thing as a gist that is not the same as a bunch of words**. **And if thoughts depended on words, how could a new word ever be coined**? **How could a child learn a word to begin with**? **How could translation from one language to another be possible**?

## Anthro K

#### 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.

#### 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.

#### A social justice and critical pedagogy method normalizes anthropocentric domination.

Bell and Russell 2K (Anne C. by graduate students in the Faculty of Environmental Studies, York Universi- ty and Constance L. a graduate student at the Ontario Institute for Studies in Educa- tion, University of Toronto, Beyond Human, Beyond Words: Anthropocentrism, Critical Pedagogy, and the Poststructuralist Turn, http://www.csse-scee.ca/CJE/Articles/FullText/CJE25-3/CJE25-3-bell.pdf

It would be an all-too-common mistake to construe the task at hand as one of interest only to environmentalists. We believe, rather, that disrupting the social scripts that structure and legitimize the human domination of nonhuman nature is fundamental not only to dealing with environmental issues, but also to examining and challenging oppressive social arrangements. The exploitation of nature is not separate from the exploitation of human groups. Ecofeminists and activists for environmental justice have shown that forms of domination are often intimately connected and mutually reinforcing (Bullard, 1993; Gaard, 1997; Lahar, 1993; Sturgeon, 1997). Thus, if critical educators wish to resist various oppressions, part of their project must entail calling into question, among other things, the instrumental exploitive gaze through which we humans distance ourselves from the rest of nature (Carlson, 1995). For this reason, the various movements against oppression need to be aware of and supportive of each other. In critical pedagogy, however, the exploration of questions of race, gender, class, and sexuality has proceeded so far with little acknowledgement of the systemic links between human oppressions and the domination of nature. The more-than-human world and human relationships to it have been ignored, as if the suffering and exploitation of other beings and the global ecological crisis were somehow irrelevant. Despite the call for attention to voices historically absent from traditional canons and narratives (Sadovnik, 1995, p. 316), nonhuman beings are shrouded in silence. This silence characterizes even the work of writers who call for a rethinking of all culturally positioned essentialisms. Like other educators influenced by poststructuralism, we agree that there is a need to scrutinize the language we use, the meanings we deploy, and the epistemological frameworks of past eras (Luke & Luke, 1995, p. 378). To treat social categories as stable and unchanging is to reproduce the prevailing relations of power (Britzman et al., 1991, p. 89). What would it mean, then, for critical pedagogy to extend this investigation and critique to include taken-for-granted understandings of “human,” “animal,” and “nature”? This question is difficult to raise precisely because these understandings are taken for granted. The anthropocentric bias in critical pedagogy manifests itself in silence and in the asides of texts. Since it is not a topic of discussion, it can be difficult to situate a critique of it. Following feminist analyses, we find that examples of anthropocentrism, like examples of gender symbolization, occur “in those places where speakers reveal the assumptions they think they do not need to defend, beliefs they expect to share with their audiences” (Harding, 1986, p. 112). Take, for example, Freire’s (1990) statements about the differences between “Man” and animals. To set up his discussion of praxis and the importance of “naming” the world, he outlines what he assumes to be shared, commonsensical beliefs about humans and other animals. He defines the boundaries of human membership according to a sharp, hierarchical dichotomy that establishes human superiority. Humans alone, he reminds us, are aware and self-conscious beings who can act to fulfill the objectives they set for themselves. Humans alone are able to infuse the world with their creative presence, to overcome situations that limit them, and thus to demonstrate a “decisive attitude towards the world” (p. 90) Freire (1990, pp. 87–91) represents other animals in terms of their lack of such traits. They are doomed to passively accept the given, their lives “totally determined” because their decisions belong not to themselves but to their species. Thus whereas humans inhabit a “world” which they create and transform and from which they can separate themselves, for animals there is only habitat, a mere physical space to which they are “organically bound.” To accept Freire’s assumptions is to believe that humans are animals only in a nominal sense. We are different not in degree but in kind, and though we might recognize that other animals have distinct qualities, we as humans are somehow more unique. We have the edge over other creatures because we are able to rise above monotonous, species-determined biological existence. Change in the service of human freedom is seen to be our primary agenda. Humans are thus cast as active agents whose very essence is to transform the world – as if somehow acceptance, appreciation, wonder, and reverence were beyond the pale. This discursive frame of reference is characteristic of critical pedagogy. The human/animal opposition upon which it rests is taken for granted, its cultural and historical specificity not acknowledged. And therein lies the problem. Like other social constructions, this one derives its persuasiveness from its “seeming facticity and from the deep investments individuals and communities have in setting themselves off from others” (Britzman et al., 1991, p. 91). This becomes the normal way of seeing the world, and like other discourses of normalcy, it limits possibilities of taking up and confronting inequities (see Britzman, 1995). The primacy of the human enterprise is simply not questioned. Precisely how an anthropocentric pedagogy might exacerbate the environmental crisis has not received much consideration in the literature of critical pedagogy, especially in North America. Although there may be passing reference to planetary destruction, there is seldom mention of the relationship between education and the domination of nature, let alone any sustained exploration of the links between the domination of nature and other social injustices. Concerns about the nonhuman are relegated to environmental education. And since environmental education, in turn, remains peripheral to the core curriculum (A. Gough, 1997; Russell, Bell, & Fawcett, 2000), anthropocentrism passes unchallenged.

#### 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]

#### The affirmative’s impact calculus sets aside endless genocides in order to continue faith in reforming their brand of humanism. Instead we must think along utopian anti-humanist calls for species-equality which requires a negation of their humanism.

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.

#### And, anthropocentric discourse and tropes cause racial criminalization and stigma faster than it can be recognized. That means our internal link is triggered at a level which your solvency mechanism has no risk of capturing by contrast to our alt which can arguably solve a proximate cause of racism.

Stanford University 2k8 [February 7). Discrimination Against Blacks Linked To Dehumanization, Study Finds. ScienceDaily. Retrieved January 25, 2012, from <http://www.sciencedaily.com­/releases/2008/02/080207163811.htm>]

ScienceDaily (Feb. 7, 2008) — Crude historical depictions of African Americans as ape-like may have disappeared from mainstream U.S. culture, but research presented in a new paper by psychologists at Stanford, Pennsylvania State University and the University of California-Berkeley reveals that many Americans subconsciously associate blacks with apes. In addition, the findings show that society is more likely to condone violence against black criminal suspects as a result of its broader inability to accept African Americans as fully human, according to the researchers. Co-author Jennifer Eberhardt, a Stanford associate professor of psychology who is black, said she was shocked by the results, particularly since they involved subjects born after Jim Crow and the civil rights movement. "This was actually some of the most depressing work I have done," she said. "This shook me up. You have suspicions when you do the work—intuitions—you have a hunch. But it was hard to prepare for how strong [the black-ape association] was—how we were able to pick it up every time." The paper, "Not Yet Human: Implicit Knowledge, Historical Dehumanization and Contemporary Consequences," is the result of a series of six previously unpublished studies conducted by Eberhardt, Pennsylvania State University psychologist Phillip Atiba Goff (the lead author and a former student of Eberhardt's) and Matthew C. Jackson and Melissa J. Williams, graduate students at Penn State and Berkeley, respectively. The paper is scheduled to appear Feb. 7 in the Journal of Personality and Social Psychology, which is published by the American Psychological Association. The research took place over six years at Stanford and Penn State under Eberhardt's supervision. It involved mostly white male undergraduates. In a series of studies that subliminally flashed black or white male faces on a screen for a fraction of a second to "prime" the students, researchers found subjects could identify blurry ape drawings much faster after they were primed with black faces than with white faces. The researchers consistently discovered a black-ape association even if the young adults said they knew nothing about its historical connotations. The connection was made only with African American faces; the paper's third study failed to find an ape association with other non-white groups, such as Asians. Despite such race-specific findings, the researchers stressed that dehumanization and animal imagery have been used for centuries to justify violence against many oppressed groups. "Despite widespread opposition to racism, bias remains with us," Eberhardt said. "African Americans are still dehumanized; we're still associated with apes in this country. That association can lead people to endorse the beating of black suspects by police officers, and I think it has lots of other consequences that we have yet to uncover." Historical background Scientific racism in the United States was graphically promoted in a mid-19th-century book by Josiah C. Nott and George Robins Gliddon titled Types of Mankind, which used misleading illustrations to suggest that "Negroes" ranked between "Greeks" and chimpanzees. "When we have a history like that in this country, I don't know how much of that goes away completely, especially to the extent that we are still dealing with severe racial inequality, which fuels and maintains those associations in ways that people are unaware," Eberhardt said. Although such grotesque characterizations of African Americans have largely disappeared from mainstream U.S. society, Eberhardt noted that science education could be partly responsible for reinforcing the view that blacks are less evolved than whites. An iconic 1970 illustration, "March of Progress," published in the Time-Life book Early Man, depicts evolution beginning with a chimpanzee and ending with a white man. "It's a legacy of our past that the endpoint of evolution is a white man," Eberhardt said. "I don't think it's intentional, but when people learn about human evolution, they walk away with a notion that people of African descent are closer to apes than people of European descent. When people think of a civilized person, a white man comes to mind." Consequences of socially endorsed violence In the paper's fifth study, the researchers subliminally primed 115 white male undergraduates with words associated with either apes (such as "monkey," "chimp," "gorilla") or big cats (such as "lion," "tiger," "panther"). The latter was used as a control because both images are associated with violence and Africa, Eberhardt said. The subjects then watched a two-minute video clip, similar to the television program COPS, depicting several police officers violently beating a man of undetermined race. A mugshot of either a white or a black man was shown at the beginning of the clip to indicate who was being beaten, with a description conveying that, although described by his family as "a loving husband and father," the suspect had a serious criminal record and may have been high on drugs at the time of his arrest. The students were then asked to rate how justified the beating was. Participants who believed the suspect was white were no more likely to condone the beating when they were primed with either ape or big cat words, Eberhardt said. But those who thought the suspect was black were more likely to justify the beating if they had been primed with ape words than with big cat words. "Taken together, this suggests that implicit knowledge of a Black-ape association led to marked differences in participants' judgments of Black criminal suspects," the researchers write. According to the paper's authors, this link has devastating consequences for African Americans because it "alters visual perception and attention, and it increases endorsement of violence against black suspects." For example, the paper's sixth study showed that in hundreds of news stories from 1979 to 1999 in the Philadelphia Inquirer, African Americans convicted of capital crimes were about four times more likely than whites convicted of capital crimes to be described with ape-relevant language, such as "barbaric," "beast," "brute," "savage" and "wild." "Those who are implicitly portrayed as more ape-like in these articles are more likely to be executed by the state than those who are not," the researchers write.

#### 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.

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## Deference DA

#### Detention upholds judicial deference

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(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

#### Lack of court ruling in detention issues key to upholding deference

Solove 96

(Daniel J., George Washington University Law School, Faith Profaned: The Religious Freedom Restoration Act and Religion in the Prisons, The Yale Law Journal, <http://docs.law.gwu.edu/facweb/dsolove/files/RFRA-Prisons.pdf>, p. 479 - 480)

Deference is the decision not to second guess the judgment of an institution out of respect for its authority and specialization. Judges lack the expertise of those ensconced in the day-to-day exigencies of prison life. Prison officials are more capable of anticipating dangers and costs and must bear the potential perils of a judge's decision to accommodate religion. As the Supreme Court has noted, "[C]ourts are ill equipped to deal with the increasingly urgent problems of prison administration and reform."164

## Case

**Rejecting security allows private forces to fill in the security vacuum left by the state resulting in more violent forms of securitization**

**Loader and Walker 07** <Ian and Neil, professor of criminology and Director of the center for Criminology at Oxford Professor of European Law European University Institute Florence , *Civilizing Security*, pg 22-25)

**Today it cannot be assumed that the state remains pre-eminent in either authorizing or delivering** policing and **security**. **Other non-state actors now lay claim to authority and competence in this field**. In defence of the contention that what Johnston and Shearing (2003) call the ‘governance of security’ is conducted by a multiplicity of institutions, one can point to the following: • **Private security has become big business across the world.** In Britain, the USA, Canada, South Africa and beyond it has long been acknowledged that those employed by commercial security outfits outstrip the total number of public police officers. Private security operatives are hired by corporations, national and local governments, and private citizens to guard office complexes, airports, universities, housing estates, schools, hospitals, shopping centres, civic buildings, courts, even police stations. People’s access to, and conduct within, large tracts of urban space is regulated by private security guards, employed by commercial companies, enforcing property rather than criminal law. Such guards also, in some settings, engage in ‘front-line’ law enforcement and order maintenance policework (Rigakos 2002). 1 Anxious citizens, in turn, rely on the security market for an array of protective hardware (alarms, gates, locks, CCTV systems), as well as resorting to forms of self-policing — often encouraged by insurance companies and neo-liberal governments. Some have formed ‘private residential associations’ or sought security inside ‘gated communities’, withdrawing their demand and support for public provision (including policing provision) in the process. In response, the public police increasingly act as market players, contracting-out non-core ‘business’, eliciting corporate sponsorship, and marketing or even selling their services to a public disaggregated into individual ‘customers’. • **All this is happening in societies with strong, established states**. In those with weak or failing states, or undergoing political transition, the public police are not the only or main security actor, nor can they lay claim to a monopoly over legitimate force inside their territory. **Across many parts of the globe today** — in Italy, Colombia, Brazil, Northern Ireland, Russia, Afghanistan, the impacted ghettos of US and European cities **one finds alternative power centres contesting state authority, ‘shadow sovereigns’** (Nordstrom 2000) operating their own codes of behaviour and mechanisms of enforcement (Gambetta 1993; Varese 2001). In these contexts, those who can afford to have, once more, fled behind walls, venturing from their residential enclosures only to make passage to other protected work and leisure domains. **The dispossessed by contrast are left at the mercy not only of militarized, partisan police forces, but also criminal gangs, hired ‘rent-a-cops’ and urban vigilantes.** Alternatively, in some isolated pockets parts of South Africa and Argentina for instance — poor communities are striving to put in place non-violent, local capacity-building forms of non-state security governance. • Nor are these developments confined within the borders of modern states. ‘**Security’ has also become a multinational business, one that crosses territorial boundaries and further erodes the internal/external security distinction.** Several private security enterprises now trade their wares across the globe (Johnston 2006). They sell security advice, equipment and personnel to anxious citizens and warring factions in weak and failed states. They claim to be filling the ‘security gaps’ left by the fall of communist rule in the former Soviet Union and eastern Europe. And they offer to serve and protect the interests of multinationals operating in disordered, crime-ridden locations. To this, one can add the ‘privatization of violence’ occurring in many conflict and post-conflict zones around the world, as ‘private military firms’ such as MPRI and Dyncorp — dubbed by Peter Singer (2003) ‘corporate warriors’ — promote and sell military ‘know-how’, equipment and intervention to beleaguered governments and other armed groups (Avant 2005). It is a telling symbol of these trends that one of the fastest-growing industries in post- invasion Iraq is private security. **These examples** too we will flesh out in more detail below. What they serve for the moment to **illustrate** is **the existence of a pluralized — market-driven — environment where the state exists alongside, sponsors and competes against a plethora of non-state actors in a bid to promise security to citizens**. It is a field where the state is not only less and less involved in delivering policing and security on the ground — what Osborne and Gaebler (1992) call ‘rowing’ — but also often lacks the effective regulatory capacity to ‘steer’. It is a field constituted by new sites of rule and authority beyond the state, one where market power or communal ordering escapes from the forms of public will- formation that only the democratic state can supply. **Against this backdrop, the project of civilizing security is faced not only** (or even mainly) **with the task of controlling the arbitrary, discriminatory exercise of sovereign force, or with the excesses of state power. It is confronted, rather more, with a notable absence of political institutions with the capacity and legitimacy required to prevent those with ‘the loudest voices and the largest pockets’** (Johnston and Shearing 2003: 144) **from organizing their own ‘security’ in ways that impose unjustifiable burdens of insecurity upon others**. Or, to put the same point more widely: **These days, the main obstacle to social justice is not the invasive intentions or proclivities of the state, but its growing impotence,** aided and abetted daily by the officially adopted ‘there is no alternative’ creed. I suppose that **the danger we will have to fight back in the coming century won’t be totalitarian coercion, the main preoccupation of the century just ended, but the falling apart of ‘totalities’ capable of securing the autonomy of human society.** (Bauman and Tester 2001: 139)