### Indefinite Detention 1AC

#### Despite promises by the Obama administration to close Guantanamo it remains a center of indefinite detention

Huffington Post 8-7, 2013 (<http://www.huffingtonpost.com/rev-richard-l-killmer/force-feeding-must-stop_b_3713678.html>)

More than 11 years after the U.S. government transported the first prisoners from Afghanistan to the Guantanamo Bay Detention Center, and four years after President Obama signed an executive order promising to close the prison within a year, it remains open. The president has said he wants to close it, an envoy has been appointed to manage its closure, and last week, the president announced that two Algerian detainees will be transferred back to Algeria, but the detention center remains an open moral wound, a symbol of the violation of our nation's deepest values. Guantanamo represents a place where the United States broke faith with itself and used torture as an interrogation technique. It is a place where the moral wound of indefinite detention continues to cause immense pain and harm. The vast majority of the 166 people held in Guantanamo have never been tried, convicted or even charged with a crime. More than half of them have been cleared for release or have been approved for transfer.¶ Indefinite detention is not only harmful to the detainees themselves, it also diminishes the moral leadership of our nation, compromises our commitment to the rule of law, and undermines our struggle against terrorism.

#### The use of executive privilege over indefinite detention is the elimination of the law to extend managerial power.

Butler 4 (2004, Judith Butler is a Professor of Rhetoric and Comparative Literature at U.C. Berkeley, “Precarious Life: The Powers of Mourning and Violence”, pg. 61-62 – AH)

My own ~~view~~ is that a contemporary version of sovereignty,¶ animated by an aggressive nostalgia that ~~see~~ks to do away with the¶ separation of powers, is produced at the moment of this withdrawal,¶ and that we have to consider the act of suspending the law as a¶ performative one which brings a contemporary configuration of¶ sovereignty into being or, more precisely, reanimates a spectral¶ sovereignty within the field of governmentality. The state produces, through the act of withdrawal, a law that is no law, a court that is no¶ court, a process that is no process. The state of emergency returns¶ the operation of power from a set of laws (juridical) to a set of rules¶ (governmental), and the rules reinstate sovereign power: rules that¶ are not binding by virtue of established law or modes of legitimation,¶ but fully discretionary, even arbitrary, wielded by officials who¶ interpret them unilaterally and decide the condition and form of their¶ invocation. Governmentality is the condition of this new exercise of¶ sovereignty in the sense that it first establishes law as a "tactic,"¶ something of instrumental value, and not "binding" by virtue of¶ its status as law. In a sense, the self-annulment of law under the¶ condition of a state of emergency revitalizes the anachronistic¶ "sovereign" as the newly invigorated subjects of managerial power.¶ Of course, they are not true sovereigns: their power is delegated, and¶ they do not fully control the aims that animate their actions. Power¶ precedes them, and constitutes them as "sovereigns," a fact that¶ already gives the lie to sovereignty. They are not fully self grounding;¶ they do not offer either representative or legitimating¶ functions to the policy. Nevertheless, they are constituted, within the¶ constraints of governmentality, as those who will and do decide on¶ who will be detained, and who will not, who may ~~see~~ life outside the¶ prison again and who may not, and this constitutes an enormously¶ consequential delegation and seizure of power. They are acted on,¶ but they also act, and their actions are not subject to re~~view~~ by any¶ higher judicial authority. The decision of when and where to convene¶ a military tribunal is ultimately executive, but here again, the¶ executive decides unilaterally, so that in each case the retraction of¶ law reproduces sovereign power. In the former case, sovereign power¶ emerges as the power of the managerial "official"-and a Kafkan¶ nightmare (or Sadean drama) is realized. In the latter case, sovereignty¶ returns to the executive, and the separation of powers is eclipsed.

#### Current legal strategies work to maintain and extend Govermentality

Houen 2006 (Alex [ecturer in Modern Literature and American Studies in the Department of English Literature at the University of Sheffield]; Sovereignty, Biopolitics, and the Use of Literature: Michel Foucault and Kathy Acker; Theory & Event 9(1); kdf)

What about the issue of biopolitical government, though? We saw earlier that Foucault in his article "Governmentality" maintains that with sovereignty "the instrument that allowed it to achieve its aim -- that is, obedience to the laws -- was the law itself." In contrast, he argues, "governmentality" uses "laws themselves as tactics -- to arrange things in such a way that, through a certain number of means, [certain] ends may be achieved." But if we accept Schmitt's characterisation of the sovereign as the one who decides legal exceptions, we must accept that sovereignty always potentiates governmentality to the extent that it tactically institutes new orders of legality. That this is the case with President Bush's military order is implicit in the statement of John Yoo, who was US Deputy-Assistant Attorney-General when the order was coming into effect: "What the administration is trying to do," he explained, "is create a new legal system."22 Judith Butler is thus right to argue that with the "war on terror" and the US detention camps we are witnessing a general convergence of sovereignty and the kind of governmentality that Foucault identifies:¶ I would like to suggest that the current configuration of state power, in relation both to the management of populations (the hallmark of [Foucault's] governmentality) and the exercise of sovereignty in the acts that suspend and limit the jurisdiction of law itself, are reconfigured in terms of the new war prison.23¶ ¶ Since the publication of Butler's article, though, sovereignty and US federal law have also come into conflict. According to the US administration, the Guantanamo Bay camps did not fall under the jurisdiction of US federal courts because although Guantanamo Bay is a US military base it is leased from the Cuban government. However, on 28 June 2004 the US Supreme Court ruled that unlawful combatants at the base do fall under federal jurisdiction and can thus plead for habeas corpus -- that is, the right to contest the grounds of their detention in US federal courts. Essentially, then, the juridical apparatus has sought to oppose the Bush administration's marriage of sovereignty and governmentality. How effective this challenge will be remains to be ~~see~~n -- only a small number of the detainees' cases have been ~~hear~~d in federal courts to date, and while the US Supreme Court granted detainees the right to habeas corpus, it did not grant them substantive rights, which means that they can still be tried subsequently by military tribunal rather than in a federal court. Moreover, extending habeas corpus to a foreign territory such as Guantanamo Bay has other ramifications. Meaning "you shall have the body" in Latin, "habeas corpus" was first introduced in 1215 in the Magna Carta to ensure that no one could be convicted in law without being brought before a court. So while it enshrines the right of an accused to have a fair legal ~~hear~~ing, it also ensures the right of the law to have the body of the accused bought before it. Extending habeas corpus to Guantanamo Bay as a foreign territory might mean its detainees have a right to challenge their case in US federal courts, then, but as Martin Puchner has argued, it also means that people residing in other foreign territories could be charged in the US and forced to appear in a US court.24¶ ¶ In light of these recent developments, I want to argue that there are two divergent strands of power emerging from the US: on the one hand, an executive administration acting against established laws in order to revive the sovereign's power over life, death, and exceptions; on the other hand, a disciplinary-juridical apparatus acting against the federal executive to extend its own jurisdiction over foreign territories and individuals. The contest between these two strands is literally a matter of fighting for power over the same foreign bodies, and to that extent they both contribute to spreading biopower globally. Admittedly, it is the Bush administration's resuscitation of sovereignty that has, to date, succeeded in retaining the upper hand. I would argue that effectively it is also succeeding in solving the question posed by Foucault at the end of Society Must be Defended: "How can one both make a biopower function and exercise the rights of war, the rights of murder and the function of death, without becoming racist?" (SMD, 263). By ratifying the category of "unlawful combatant," the US administration is not characterising its "non-citizen" enemy as a specific race or nationality. Rather, as someone declared to be waging war outside established laws and without state backing, the unlawful combatant is configured as anti-state, anti-national, and anti-political, and so cannot be ~~see~~n as a political citizen. And without the rights of a political subject, such human "non-citizens" are stripped of the rights to be human, while the question of whether they will live or die is held in suspension. That is to say, not only is their status as human suspended, so is their existence as living being. And in that respect, the exercise of sovereignty here has not been a matter of "taking life" so much as producing a state of suspended animation, a state of being that is neither alive nor dead, but latent. Furthermore, the longer such unlawful combatants are deemed a threat, the longer the new sovereignty can justify its powers of suspension. Indefinite detention is thus an infinite prolongation of sovereignty's resuscitated power.

#### **Specifically military tribunals are forms of executive power where there are no checks on the expansion of Govermentality. Tribunals are created, used, and enforced by the executive whenever they desire. The people who are tried are subjected to no true trial but are left as victims of the state.**

Butler ‘4 (2004, Judith Butler is a Professor of Rhetoric and Comparative Literature at U.C. Berkeley, “Precarious Life: The Powers of Mourning and Violence”, pg. 74-76 AH)

The danger that these prisoners are said to pose is unlike dangers¶ that might be substantiated in a court of law and redressed through¶ punishment. In the news conference on March 21, 2002, Department¶ of Defense General Counsel Haynes answers a reporter's question in¶ a way that confirms that this equivocation is at work in their thinking.¶ An unnamed reporter in the news conference, concerned about the¶ military tribunal, asks: If someone is acquitted of a crime under this¶ tribunal, will they be set free? Haynes replied:¶ If we had a trial right this minute, it is conceivable that somebody¶ could be tried and acquitted of that charge, but might not¶ automatically be released. The people we are detaining, for example,¶ in Guantanamo Bay, Cuba, are enemy combatants that [sic) we¶ captured on the battlefield ~~see~~king to harm US soldiers or allies, and¶ they're dangerous people. At the moment, we're not about to¶ release any of them unless we find that they don't meet those¶ criteria. At some point in the future ...¶ The reporter then interrupted, saying: "But if you (can't] convict¶ them, if you can't find them guilty, you would still paint them with¶ that brush that we find you dangerous even though we can't convict¶ you, and continue to incarcerate them?" After some to and fro,¶ Haynes stepped up to the microphone, and explained that "the people that we now hold at Guantanamo are held for a specific reason that is¶ not tied specifically to any particular crime. They're not held they're¶ not being held on the basis that they are necessarily¶ criminals." They will not be released unless the US finds that "they¶ don't meet those criteria," but it is unclear what criteria are at work¶ in Haynes's remark. If the new military tribunal sets the criteria, then¶ there is no guarantee that a prisoner will be released in the event of¶ exoneration. The prisoner exonerated by trial may still be "deemed¶ dangerous," where that deeming is based in no established criteria.¶ Establishing dangerousness is not the same as establishing guilt and,¶ in Haynes's ~~view~~, and in ~~view~~s subsequently repeated by administrative¶ spokespersons, the executive branch's power to deem a¶ detainee dangerous preempts any determination of guilt or innocence¶ established by a military tribunal. In the wake of this highly qualified approach to the new military¶ tribunals (themselves regarded as illegitimate), we ~~see~~ that these are¶ tribunals whose rules of evidence depart in radical ways from both¶ the rules of civilian courts and the protocols of existing military¶ courts, that they will be used to try only some detainees, that the¶ office of the President will decide who qualifies for these secondary¶ military tribunals, and that matters of guilt and innocence reside¶ finally with the executive branch. If a military tribunal acquits a¶ person, the person may still be deemed dangerous, which means that¶ the determination by the tribunal can be preempted by an extra-legal¶ determination of dangerousness. Given that the military tribunal is¶ itself extra-legal, we ~~see~~m to be witnessing the replication of a¶ principle of sovereign state prerogative that knows no bounds. At¶ every step of the way, the executive branch decides the form of the¶ tribunal, appoints its members, determines the eligibility of those to¶ be tried, and assumes power over the final judgment; it imposes the¶ trial selectively; it dispenses with conventional evidentiary procedure. And it justifies all this through recourse to a determination of¶ "dangerousness" which it alone is in the position to decide. A certain¶ level of dangerousness takes a human outside the bounds of law, and¶ even outside the bounds of the military tribunal itself, makes that¶ human into the state's possession, infinitely detainable. What counts¶ as "dangerous" is what is deemed dangerous by the state, so that,¶ once again, the state posits what is dangerous, and in so positing it,¶ establishes the conditions for its own preemption and usurpation of¶ the law, a notion of law that has already been usurped by a tragic¶ facsimile of a trial.

#### **Govermentality functions through managerial powers and practices that function to enforce discipline on mass populations.**

Butler ‘4 (2004, Judith Butler is a Professor of Rhetoric and Comparative Literature at U.C. Berkeley, “Precarious Life: The Powers of Mourning and Violence”, pg. 51-56 AH)

Foucault wrote in 1978 that governmentality, understood as the way¶ in which political power manages and regulates populations and¶ goods, has become the main way state power is vitalized. He does¶ not say, interestingly, that the state is legitimated by governmentality,¶ only that it is "vitalized," suggesting that the state, without governmentality,¶ would fall into a condition of decay. Foucault suggests that the state used to be vitalized by sovereign power, where¶ sovereignty is understood, traditionally, as providing legitimacy for¶ the rule of law and offering a guarantor for the representational¶ claims of state power. But as sovereignty in that traditional sense has¶ lost its credibility and function, governmentality has emerged as a¶ form of power not only distinct from sovereignty, but characteristically¶ late modern.2 Governmentality is broadly understood as a¶ mode of power concerned with the maintenance and control of¶ bodies and persons, the production and regulation of persons and¶ populations, and the circulation of goods insofar as they maintain¶ and restrict the life of the population. Governmentality operates¶ through policies and departments, through managerial and bureaucratic¶ institutions, through the law, when the law is understood as¶ "a set of tactics," and through forms of state power, although not¶ exclusively. Governmentality thus operates through state and nonstate¶ institutions and discourses that are legitimated neither by direct¶ elections nor through established authority. Marked by a diffuse set¶ of strategies and tactics, governmentality gains its meaning and¶ purpose from no single source, no unified sovereign subject. Rather,¶ the tactics characteristic of governmentality operate diffusely, to¶ dispose and order populations, and to produce and reproduce subjects,¶ their practices and beliefs, in relation to specific policy aims.¶ Foucault maintained, boldly, that "the problems of governmentality¶ and the techniques of government have become the only political¶ issues, the only real space for political struggle and contestation"¶ (IoJ). For Foucault, it is precisely "governmentalization that has¶ permitted the state to survive" (IoJ). The only real political issues¶ are those that are vital for us, and what vitalizes those issues within¶ modernity, according to Foucault, is governmentalization.¶ Although Foucault may well be right about governmentality¶ having assumed this status, it is important to consider that the emergence of governmentality does not always coincide with the¶ devitalization of sovereignty.3 Rather, the emergence of governmentality¶ may depend upon the devitalization of sovereignty in its¶ traditional sense: sovereignty as providing a legitimating function for¶ the state; sovereignty as a unified locus for state power. Sovereignty¶ in this sense no longer operates to support or vitalize the state, but¶ this does not foreclose the possibility that it might emerge as a¶ reanimated anachronism within the political field unmoored from its¶ traditional anchors. Indeed, whereas sovereignty has conventionally¶ been linked with legitimacy for the state and the rule of law,¶ providing a unified source and symbol of political power, it no longer¶ functions that way. Its loss is not without consequence, and its¶ resurgence within the field of governmentality marks the power of¶ the anachronism to animate the contemporary field. To consider that¶ sovereignty emerges within the field of governmentality, we have to call into question, as Foucault surely also did, the notion of history as¶ a continuum. The task of the critic, as Walter Benjamin maintained,¶ is thus to "blast a specific era out of the homogeneous course of¶ history" and to "grasp ... the constellation which his own era has¶ formed with a definite earlier one."4¶ Even as Foucault offered an account of governmentality that¶ emerged as a consequence of the devitalization of sovereignty, he¶ called into question that chronology, insisting that the two forms of¶ power could exist simultaneously. I would like to suggest that the¶ current configuration of state power, in relation both to the¶ management of populations (the hallmark of governmentality) and¶ the exercise of sovereignty in the acts that suspend and limit the¶ jurisdiction of law itself, are reconfigured in terms of the new war¶ prison. Although Foucault makes what he calls an analytic distinction¶ between sovereign power and governmentality, suggesting at various¶ moments that governmentality is a later form of power, he also holds open the possibility that these two forms of power can and do coexist¶ in various ways, especially in relation to that form of power he called¶ "discipline." What was not possible from his vantage point was to¶ predict what form this coexistence would take in the present¶ circumstances, that is, that sovereignty, under emergency conditions¶ in which the rule of law is suspended, would reemerge in the context¶ of governmentality with the vengeance of an anachronism that¶ refuses to die. This resurgent sovereignty makes itself known¶ primarily in the instance of the exercise of prerogative power. But¶ what is strange, if not fully disturbing, is how the prerogative is¶ reserved either for the executive branch of government or to¶ managerial officials with no clear claim to legitimacy.¶ In the moment that the executive branch assumes the power of¶ the judiciary, and invests the person of the President with unilateral¶ and final power to decide when, where, and whether a military trial¶ takes place, it is as if we have returned to a historical time in which¶ sovereignty was indivisible, before the separation of powers has¶ instated itself as a precondition of political modernity. Or better¶ formulated: the historical time that we thought was past turns out to¶ structure the contemporary field with a persistence that gives the lie to¶ history as chronology. Yet the fact that managerial officials decide who¶ will be detained indefinitely, and who will be re~~view~~ed for the¶ possibility of a trial with questionable legitimacy, suggests that a¶ parallel exercise of illegitimate decision is exercised within the field¶ of governmentality.¶ Governmentality is characterized by Foucault as sometimes¶ deploying law as a tactic, and we can ~~see~~ the instrumental uses to¶ which law is put in the present situation. Not only is law treated as a¶ tactic, but it is also suspended in order to heighten the discretionary¶ power of those who are asked to rely on their own judgment to¶ decide fundamental matters of justice, life, and death. Whereas the suspension of law can clearly be read as a tactic of governmentality,¶ it has to be ~~see~~n in this context as also making room for the¶ resurgence of sovereignty, and in this way both operations work¶ together. The present insistence by the state that law can and ought¶ to be suspended gives us insight into a broader phenomenon, namely,¶ that sovereignty is reintroduced in the very acts by which state¶ suspends law, or contorts law to its own uses. In this way, the state¶ extends its own domain, its own necessity, and the means by which¶ its self-justification occurs. I hope to show how procedures of¶ governmentality, which are irreducible to law, are invoked to extend¶ and fortify forms of sovereignty that are equally irreducible to law.¶ Neither is necessarily grounded in law, and neither deploys legal¶ tactics exclusively in the field of their respective operations. The¶ suspension of the rule of law allows for the convergence of¶ governmentality and sovereignty; sovereignty is exercised in the act¶ of suspension, but also in the self-allocation of legal prerogative;¶ governmentality denotes an operation of administration power that¶ is extra-legal, even as it can and does return to law as a field of tactical¶ operations. The state is neither identified with the acts of sovereignty¶ nor with the field of governmentality, and yet both act in the name of¶ the state. Law itself is either suspended, or regarded as an instrument¶ that the state may use in the service of constraining and monitoring¶ a given population; the state is not subject to the rule of law, but law¶ can be suspended or deployed tactically and partially to suit the¶ requirements of a state that ~~see~~ks more and more to allocate¶ sovereign power to its executive and administrative powers. The law¶ is suspended in the name of the "sovereignty" of the nation, where¶ "sovereignty" denotes the task of any state to preserve and protect its¶ own territoriality. By this act of suspending the law, the state is¶ further disarticulated into a set of administrative powers that are, to¶ some extent, outside the apparatus of the state itself; and the forms of sovereignty resurrected in its midst mark the persistence of forms of¶ sovereign political power for the executive that precede the¶ emergence of the state in its modern form.

#### **War Prisons are an ultimate form of Governmentality. These institutions assume total control of life and death.**

Butler ‘4 (2004, Judith Butler is a Professor of Rhetoric and Comparative Literature at U.C. Berkeley, “Precarious Life: The Powers of Mourning and Violence”, pg. 94-95 – AH)

For Foucault, then, governmentality regards laws as tactics; their¶ operation is "justified" through their aim, but not through recourse¶ to any set of prior principles or legitimating functions. Those¶ functions may be in place, but they are not finally what animates the¶ field of governmentality. Understood in this way, the operations of¶ governmentality are for the most part extra-legal without being¶ illegal. When law becomes a tactic of governmentality, it ceases to¶ function as a legitimating ground: governmentality makes concrete the¶ understanding of power as irreducible to law. Thus governmentality¶ becomes the field in which resurgent sovereignty can rear its¶ anachronistic head, for sovereignty is also ungrounded in law. In the¶ present instance, sovereignty denotes a form of power that is fundamentally¶ lawless, and whose lawlessness can be found in the way in which law itself is fabricated or suspended at the will of a designated¶ subject. The new war prison literally manages populations, and thus¶ functions as an operation of governmentality. At the same time, however,¶ it exploits the extra-legal dimension of governmentality to assert¶ a lawless sovereign power over life and death. In other words, the new¶ war prison constitutes a form of governmentality that considers itself¶ its own justification and ~~see~~ks to extend that self-justificatory form¶ of sovereignty through animating and deploying the extra-legal¶ dimension of governmentality. After all, it will be "officials" who¶ deem suspected terrorists or combatants "dangerous" and it will be¶ "officials," not representatives of courts bound by law, who ostensibly¶ will re~~view~~ the cases of those detained indefinitely. Similarly, the¶ courts themselves are conceived explicitly as "an instrument" used in¶ the service of national security, the protection of principality, the¶ continuing and augmented

#### **Those who are detained indefinitely by the US have no ability to challenge their detention thus they are excluded from the law rendering them as less than human. This process allows for the detainees lives to become ungrievable lives.**

Butler 4 (2004, Judith Butler is a Professor of Rhetoric and Comparative Literature at U.C. Berkeley, “Precarious Life: The Powers of Mourning and Violence”, pg 56-59 – AH)

With the publication of the new regulations, the US government¶ holds that a number of detainees at Guantanamo will not be given trials at all, but will rather be detained indefinitely. It is crucial to ask¶ under what conditions some human lives cease to become eligible for¶ basic, if not universal, human rights. How does the US government¶ construe these conditions? And to what extent is there a racial and¶ ethnic frame through which these imprisoned lives are ~~view~~ed and¶ judged such that they are deemed less than human, or as having¶ departed from the recognizable human community? Moreover, in¶ maintaining that some prisoners will be detained indefinitely, the state¶ allocates to itself a power, an indefinitely prolonged power,¶ to exercise judgments regarding who is dangerous and, therefore,¶ without entitlement to basic legal rights. In detaining some prisoners¶ indefinitely, the state appropriates for itself a sovereign power that is¶ defined over and against existing legal frameworks, civil, military,¶ and international. The military tribunals may well acquit someone of¶ a crime, but not only is that acquittal subject to mandatory executive¶ re~~view~~, but the Department of Defense has also made clear that¶ acquittal will not necessarily end detention. Moreover, according to¶ the new tribunal regulations, those tried in such a venue will have no¶ rights of appeal to US civil courts (and US courts, responding to¶ appeals, have so far maintained that they have no jurisdiction over¶ Guantanamo, which falls outside US territory). Here we can ~~see~~ that¶ the law itself is either suspended or regarded as an instrument that the¶ state may use in the service of constraining and monitoring a given¶ population. Under this mantle of sovereignty, the state proceeds to¶ extend its own power to imprison indefinitely a group of people¶ without trial. In the very act by which state sovereignty suspends law,¶ or contorts law to its own uses, it extends its own domain, its own¶ necessity, and develops the means by which the justification of its¶ own power takes place. Of course, this is not the "state" in toto, but¶ an executive branch working in tandem with an enhanced administrative¶ wing of the military. The state in this sense, then, augments its own power in at least¶ two ways. In the context of the military tribunals, the trials yield no¶ independent conclusions that cannot be reversed by the executive¶ branch. The trials' function is thus mainly advisory. The executive¶ branch in tandem with its military administration not only decides¶ whether or not a detainee will stand trial, but appoints the tribunal,¶ re~~view~~s the process, and maintains final say over matters of guilt,¶ innocence, and punishment, including the death penalty. On May 24,¶ 2003, Geoffrey Miller, commanding officer at Camp Delta, the new¶ base on Guantanamo, explained in an inter~~view~~ that death chambers¶ were in the process of being built there in anticipation of the death¶ penalty being meted out. 5 Because detainees are not entitled to these¶ trials, but offered them at the will of the executive power, there is no¶ semblance of separation of powers in these circumstances. Those¶ who are detained indefinitely will have their cases re~~view~~ed by¶ officials--not by courts--on a periodic basis. The decision to detain¶ someone indefinitely is not made by executive re~~view~~, but by a set of¶ administrators who are given broad policy guidelines within which to¶ act. Neither the decision to detain nor the decision to activate the¶ military tribunal is grounded in law. They are determined by¶ discretionary judgments that function within a manufactured law or¶ that manufacture law as they are performed. In this sense, both of¶ these judgments are already outside the sphere of law, since the¶ determination of when and where, for instance, a trial might be¶ waived and detention deemed indefinite does not take place within a¶ legal process, strictly ~~speak~~ing; it is not a decision made by a judge for¶ which evidence must be submitted in the form of a case that must¶ conform to certain established criteria or to certain protocols of¶ evidence and argument. The decision to detain, to continue to detain¶ someone indefinitely is a unilateral judgment made by government¶ officials who simply deem that a given individual or, indeed, a group poses a danger to the state. This act of "deeming" takes place in the¶ context of a declared state of emergency in which the state exercises¶ prerogatory power that involves the suspension of law, including due¶ process for these individuals. The act is warranted by the one who¶ acts, and the "deeming" of someone as dangerous is sufficient to¶ make that person dangerous and to justify his indefinite detention.¶ The one who makes this decision assumes a lawless and yet fully¶ effective form of power with the consequence not only of depriving¶ an incarcerated human being of the possibility of a trial, in clear¶ defiance of international law, but of investing the governmental¶ bureaucrat with an extraordinary power over life and death. Those¶ who decide on whether someone will be detained, and continue to be¶ detained, are government officials, not elected ones, and not members¶ of the judiciary. They are, rather, part of the apparatus of governmentality;¶ their decision, the power they wield to "deem" someone¶ dangerous and constitute them effectively as such, is a sovereign¶ power, a ghostly and forceful resurgence of sovereignty in the midst¶ of governmentality.¶

#### **Ungrievable lives are subjected to endless violence and are ontologically excluded.**

Butler ‘4 (2004, Judith Butler is a Professor of Rhetoric and Comparative Literature at U.C. Berkeley, “Precarious Life: The Powers of Mourning and Violence”, pg. 33-34 – AH)

I am referring not only to humans not regarded as humans, and thus to a restrictive conception of the human that is based upon their exclusion. It is not a matter of a simple entry of the excluded into an established ontology, but an insurrection at the level of ontology, a critical opening up of the questions, What is real? Whose lives are real? How might reality be remade? Those who are unreal have, in a sense, already suffered the violence of derealization. What, then, is the relation between violence and those lives considered as unreal? Does violence effect that unreality? Does violence take place on the condition of that unreality? If violence is done against those who are unreal, then, from the perspective of violence, it fails to injure or negate those lives since those lives are already negated. But they have a strange way of remaining animated and so must be negated again (and again). They cannot be mourned because they are always already lost or, rather, never “were,” and they must be killed, since they ~~see~~m to live on, stubbornly, in this state of deadness. Violence renews itself in the face of the apparent inexhaustibility of its object. The derealization of the¶ “Other” means that it is neither alive nor dead, but interminably ¶ spectral. The infinite paranoia that imagines the war against terrorism¶ as a war without end will be one that justifies itself endlessly in¶ relation to the spectral infinity of its enemy, regardless of whether or¶ not there are established grounds to suspect the continuing operation¶ of terror cells with violent aims.

#### **The Biopolitical judgment of what a “human” is allows for the justification of atrocities that are continually committed against populations that are deemed disposable or ungrievable to allow for total domination of all forms of life.**

Pugliese 2013 (Joseph [Associate professor of cultural studies @ Macquarie University]; State Violence and the Execution of Law Biopolitical Caesurae of Torture, Black Sites, Drones; p. 224-6; kdf)

For me, these other possibilities are cryptically encoded in another oracular¶ pronouncement by Foucault in which he identifies 'the human as a transitory¶ postulate.'7 A postulate is, by definition, an axiom, a principle and a prerequisite.¶ 'The human,' as qualified euro-anthropocentric axiom, has functioned as the biopolitical¶ figure that has ordered the earth's life forms into speciesist hierarchies,¶ thereby legitimating the exercise of violence, control and regularization over all¶ those other life forms that are ranked below it. This postulate, however, is inscribed¶ by its own unthought prerequisite and the torsions of a double movement. On the¶ one hand, 'the animal' founds 'the human' as its unthought precisely because, as¶ a priori, its status in articulating this di~~vision~~ is always-already given; on the other¶ hand, even as it supplies the conditions of possibility for this conceptual order, 'the¶ animal' is relegated to the domain of the nonconceptual where it assumes the emblematic status of 'nature' - outlaw locus of unthinking instinct and unmediated¶ materiality. As such, anything that is captured within this domain is presented¶ as open to conquest, enslavement, domestication and/ or execution. As Spillers'¶ work attests, a critical re~~view~~ of the colonial history of 'the human' only too quickly¶ evidences the positioning of non-European peoples within the vestibularity of nature¶ in opposition to the culture. Da Silva's work theorizes this di~~vision~~ as what is¶ constructed and maintained by the arsenal of raciality and its production of the self¶ determined ethical-:furidicalfigure- 'the human'- and the ciffictable I that stands before¶ the horizon of death - the 'no body.' The operation of this dense biopolitical¶ matrix has enabled the violent history of preclusion of non-European subjects¶ from the very category of 'the human.' Relatedly, this biopolitical matrix also¶ explains why the international apparatus of 'human rights' fails to deliver its¶ universalist promises as it remains 'generally compatible with the maintenance of¶ existing geopolitical structures of wealth and authority in the world. •B¶ As I write, this very argument is buttressed by the release of the US Department¶ of State's Country Reports on Human Rights Practices for 2011, a weighty and detailed¶ report that lists the human rights violations of all countries except the United¶ States.9 Nowhere in this report are the gross violations of human rights perpetrated¶ by the US state documented or called to account. Occupying a transcendent¶ locus of positional superiority, as imperial state it enjoys the prerogative to absent¶ itself from this catalogue of violence even as it plays an instrumental role in its¶ production. This absence, this striking lacuna, also signifies otherwise. Reading¶ against the grain, this act of exception marks the outlaw status of a rogue state that¶ cannot, because of its own intra- and international gross violations of human¶ rights, be incorporated ·within the very (problematic) domain that it sets itself the¶ task of surveying and adjudicating. As a global purveyor of state terrorism, it is¶ logically excluded from the very field that it effectively renders void. As the war on¶ terror - with its regime of torture and extraordinary rendition, its domestic and¶ international black site prisons, its ecocidal expropriation and destruction of¶ Native American lands, and its ongoing drone strikes has demonstrated, neither¶ the category of 'the human' nor the legal apparatus of'human rights' will work to¶ stop the imperial state from deploying strategies of biopolitical violence when it¶ chooses to exercise its will to power in order to secure and reproduce its positional¶ superiority: the imperial right to open access of targeted territories and bodies¶ overrides the so-called universalist status of the human rights apparatus. In the US¶ state's coding of anonymous but 'suspect' Afghan or Pakistani subjects as mere¶ 'patterns of life' and their consequent extermination by drones, human rights fail¶ to figure as they do not apply to these human subjects: the civilian dead of US¶ drone strikes signify as nothing more than biopolitical substance that can be killed¶ with impunity. When human rights are invoked and activated, retrospectively as in the case of the torture victims or civilian drone casualties, they operate as¶ ameliorative, legalistic interventions that largely leave intact the structures of¶ biopolitical power that actually produced the violence in the first place. Having¶ said this, I do not want to dismiss the apparatus of human rights wholesale in a¶ facile gesture that fails to acknowledge that human rights can be mobilized in¶ counter-discursive ways within contemporary biopolitical configurations of state¶ power; neither do I negate the critical overturning of unjust practices that they¶ have enabled nor their power, contingently, to preclude or circumscribe certain¶ forms of state violence. Rather, the issue is to disclose the violent biopolitical¶ assumptions that continue to inform this apparatus in order to begin to reorganize¶ and redistribute the relations of asymmetrical power that inform it.¶ I close this book on a note of tenuous hope pinned to the concept of the euroanthropocentric¶ figure of 'the human' as a transitory postulate. As I remarked¶ above, a postulate is inscribed with the force of the axiom, as that a priori that¶ aspires to determine what is to come. A postulate, however, also signifies a claim¶ or assertion that has been assumed without proof. 'The human,' as euroanthropocentric¶ construct, emerges as that being that has organized the earth and¶ its life forms on the unfounded principle of an assumed superiority, violently¶ secured through the ceaseless deployment ofbiopolitical caesurae. I contrast this¶ with a number oflndigenous cultures that challenge the anthropocentric distribution¶ of life across speciesist hierarchies and that refuse the violence ofbiopolitical¶ di~~vision~~s by conceptualizing relations between humans and everything in nature¶ in interconstitutive and intersubjective ways. 10 The very speciesist apparatus -¶ discursive, juridical and philosophical - that has worked to constitute the euroanthropocentric¶ figure of 'the human' has been instrumental in producing and¶ demarcating all those other savage-animal subjects/ objects that continue to figure¶ as its inverse. Unmasked as a transitory postulate, without due proof of its assumed¶ superiority given the exorbitance of its unethical demands and the enormity of the¶ violence it visits upon the life of the planet, the euro-anthropocentric figure of 'the¶ human' emerges as a figure generated by the contingency of geopolitical, historical¶ and discursive determinations. Conceptualizing 'the human' as a transitory¶ postulate establishes the possibility of beginning the difficult work of rendering this¶ euro-anthropocentric figure predicated on the violence of biopolitical caesurae¶ inoperative. It opens the possibility to establish ethical relations with those very¶ subjects and entities that have been outlawed from the ground of the ethical.

#### *Thus: Austin and I advocate that the United States Federal Government should restrict the presidential war powers by releasing those who are unlawfully held indefinitely by the United States government.*

#### The only way to solve for indefinite detention is the release of detainees.

Chow 2011 [Samuel [JD @ Cardozo]; The Kiyemba Paradox: Creating a Judicial Framework to Eradicate Indefinite, Unlawful Executive Detentions; 19 Cardozo J. Int'l & Comp. L. 775; kdf)

This Note examines the availability of habeas re~~view~~ in executive terrorist detentions. Specifically, the scope of habeas is examined in light of recent interpretations of the judicial branch's ability, or lack thereof, to order release as a remedy. Courts have a rightful place in the foreign relations debate and recent detainee cases point to habeas re~~view~~ as a means to exercise that role. n41 For habeas re~~view~~ to be meaningful, the ability to order functional release, or release where the detainees are no longer being physically detained, must be available. The restraints Munaf has placed on functional release are not problematic so long as the detainees' liberty interests are adequately accounted for. This Note will argue that Kiyemba poses the archetypal situation where detainees have been unlawfully held for an unreasonable length of time, eroding that liberty interest. If release-plus is necessary to effectuate functional release under these conditions, courts must have the authority to grant it - even if those circumstances only occur in a limited class of cases. Indeed, both historical evidence of the judicial branch's role in such circumstances and the Zadvydas v. Davis n42 line of cases has already answered the question of what balance must be struck between the liberty interests of a detainee held unlawfully and the executive immigration prerogative. Limits must be placed on how long a detainee may be held and the liberty interest, under circumstances where the detention has become unreasonably lengthy, must win out. n43 Functional release, therefore, must apply when unlawful detentions reach a point where they can be characterized as unreasonable.

Part II examines the historical evolution of habeas corpus and demonstrates that its significance as a judicial remedy depends on the courts' ability to order a detainee's functional release. Part III [\*782] introduces the contemporary application and scope of habeas corpus in the context of executive terrorist detentions. Part IV examines the application of immigration paradigms to habeas jurisprudence. Part V argues, based on the Kiyemba paradox, that the courts' role in re~~view~~ing such detention cases is substantially diminished if they are unable to meaningfully offer release as a remedy for unlawful detentions. Ultimately, this Note concludes that under particular circumstances, the courts must have the authority to order release into the United States because the availability of release as a remedy is an essential element of habeas corpus. Furthermore, if the availability of habeas re~~view~~ is constitutionally-guaranteed, then as a general rule, the availability of release as a remedy must also be guaranteed. This Note will show that these propositions do not, contrary to what the government argued in Kiyemba, run counter to current understandings of the executive immigration authority.

#### The 1AC is a site of resistance to the power of the War Prison which allows for questions of identity and exclusion to be brought into the debate space.

Butler ‘4 (2004, Judith Butler is a Professor of Rhetoric and Comparative Literature at U.C. Berkeley, “Precarious Life: The Powers of Mourning and Violence”, pg. 98-99 – AH)

It may ~~see~~m that the normative implication of my analysis is that I wish the state were bound to law in a way that does not treat the law merely as instrumental or dispensable. This is true. But I am not interested in the rule of law per se, however, but rather in the place of law in the articulation of an international conception of rights and obligations that limit and condition claims of state sovereignty. And I am further interested in elaborating an account of power that will produce effective sites of intervention in the dehumanizing effects of the new war prison. I am well aware that international models¶ can be exploited by those who exercise the power to use them to their advantage, but I think that a new internationalism must nevertheless strive for the rights of the stateless, and for forms of self-determination that do not resolve into capricious and cynical forms of state sove ei?nty. There are advantages to conceiving power in such a way that It IS not centered in the nation-state, but conceived, rather, to operate as well through non-state institutions and discourses since the points of intervention have proliferated, and the aim of politics is not only or merely the overthrow of the state. A broader set of tactics ae opened up by the field of governmentality, including those discourses that shape and deform what we mean by "the human."

#### Our exposure of law reveals the mythico- juridical violence of governmentality

Lewis 2013 (Tyson E. Professor of Education at Montclair State University, “Education as Free Use: Giorgio Agamben on Studious Play, Toys, and the Inoperative Schoolhouse”, Study of Philosophy Education, May 2013, Pg. 6, Vance)

Although these two readings of play—positive and negative—are interesting, they both miss the central point of Agamben’s argument. The human being is not a homo ludens but a ‘‘homo profanes’’ (de la Durantaye 2008, p. 27). In Profanations it is not play as such that is endorsed. Following his analysis of play, Agamben immediately states the following: ‘‘It [profanation] is the sort of use that Benjamin must have had in mind when he wrote of Kafka’s The New Attorney that the law that is no longer applied but only studied is the gate to justice’’ (2007b, p. 76). Commenting further on Benjamin’s reflections on Kafka, Agamben continues, In the Kafka essay, the enigmatic image of a law that is studied but no longer practiced corresponds, as a sort of remnant, to the unmasking of mythico-juridical violence effected by pure violence. There is, therefore, still a possible figure of law after its nexus with violence and power has been deposed, but it is a law that no longer has force or application, like the one in which the ‘new attorney,’ leafing through ‘our old books,’ buries himself in study, or like the one that Foucault may have had in mind when he spoke of a ‘new law’ that has been freed from all discipline and all relation to sovereignty. (2005, p. 63) Suspended, the law that is studied is deactivated, no longer in force, and thus open to play. In this sense, it is not play but rather the relation between play and study that is most important. Summarizing, Agamben writes, ‘‘And this studious play is the passage that allows us to arrive at that justice that one of Benjamin’s posthumous fragments defines as state of the world in which the world appears as a good that absolutely cannot be appropriated or made juridical’’ (Ibid, p. 63). Studious play is therefore neither simply free play nor ritual but rather the zone of indistinction that lies between the two.

#### **Dehumanization occurs on a discursive level.**

Butler ‘4 (2004, Judith Butler is a Professor of Rhetoric and Comparative Literature at U.C. Berkeley, “Precarious Life: The Powers of Mourning and Violence”, pg. 36 – AH)

Dehumanization's relation to discourse is complex. It would be¶ too simple to claim that violence simply implements what is already happening in discourse, such that a discourse on dehumanization produces treatment, including torture and murder, structured by the discourse. Here the dehumanization emerges at the limits of discursive life, limits established through prohibition and foreclosure. There is less a dehumanizing discourse at work here than a refusal of discourse that produces dehumanization as a result. Violence against those who are already not quite living, that is, living in a state of suspension between life and death, leaves a mark that is no mark. There will be no public act of grieving (said Creon in Antigone). If there is a "discourse," it is a silent and melancholic one in which there have been no lives, and no losses; there has been no common bodily condition, no vulnerability that serves as the basis for an apprehension of our commonality; and there has been no sundering of that commonality. None of this takes place on the order of the event. None of this takes place. In the silence of the newspaper, there was¶ no event no loss and this failure of recognition is mandated through an identification 'with those who identify with the perpetrators of that¶ violence.