# Round 1—Neg vs Kansas CD

## 1NC

### 1nc 1

#### The 1AC’s attempt to find the ‘legitimate’ use of violence is intrinsically linked to the creation of a hierarchy of life that has been used to justify nonhuman subjugation

**Kochi 9** - Sussex Law School, University of Sussex, Brighton, UK (Tarik, “Species War: Law, Violence and Animals,” SAGE Journals)

Although species war remains largely hidden because it is not seen as war or even violence at all it continues to affect the ways in which juridical mechanisms order the legitimacy of violence. While species war may not be a Western monopoly, in this account I will only examine a Western variant. This variant, however, is one that may well have been imposed upon the rest of the world through colonization and globalization. In what will follow I offer a sketch of species war and show how the juridical mechanisms for determining what constitutes legitimate violence fall back upon the hidden foundation of species war. I try to do this by showing that the various modern juridical mechanisms for determining what counts as legitimate violence are dependent upon a practice of judging the value of forms of life. I argue that contemporary claims about the legitimacy of war are based upon judgements about differential life-value and that these judgements are an extension of an original practice in which the legitimacy of killing is grounded upon the valuation of the human above the non-human. Further, by giving an overview of the ways in which our understanding of the legitimacy of war has changed, I attempt to show how the notion of species war has been continually excluded from the Law of war and of how contemporary historical movements might open a space for its possible re-inclusion. In this sense, the argument I develop here about species war offers a particular way of reflecting upon the nature of law more generally. In a Western juridical tradition, two functions of law are often thought to be: the establishment of order (in the context of the preservation of life, or survival); and, the realization of justice (a thick conception of the “good”). Reflecting upon these in light of the notion of species war helps us to consider that at the heart of both of these functions of law resides a practice of making judgements about the life-value of particular “objects.” These objects are, amongst other things: human individuals, groups of humans, non-human animals, plants, transcendent entities and ideas (the “state,” “community,” etc.). For the law, the practice of making judgements about the relative life- value of objects is intimately bound-up with the making of decisions about what objects can be killed. Within our Western conception of the law it is difficult to separate the moment of judgement over life-value from the decision over what constitutes “legitimate violence.” Species war sits within this blurred middle-ground between judgement and decision – it points to a moment at the heart of the law where distinctions of value and acts of violence operate as fundamental to the founding or positing of law. The primary violence of species war then takes place not as something after the establishment of a regime of law (i.e., after the establishment of the city, the state, or international law). Rather, the violence of species war occurs at the beginning of law, at its moment of foundation, as a generator, as a motor. 7

#### This distinction rests at the heart of the legal system—the hierarchal differential between the human and nonhuman not only ensures continued species war but is the foundation behind any form of violence against the Other.

**Kochi 9** - Sussex Law School, University of Sussex, Brighton, UK (Tarik “Species War: Law, Violence and Animals”)

The distinction between bare life and the good life is a legal-political distinction. It has, at least since Aristotle, resided at the foundation of Western legal and political theory. The law which holds together and  governs the political community is posited with the view of not merely sustaining the bare needs of life, but of establishing and realizing some form of the good life. However, the distinction between bare life and the good life already contains within it a prior distinction, one which arises when the survival of humans is distinguished from and affirmed against the survival of  non-human animals. At the basis of the distinction between bare life and the good life, and hence, at the basis of law, resides the human-animal distinction – a determination of value that the human form of life is good and that it is worth more or better than the lives of  non-human animals. There is a certain Nietzschean sense of the term “good” which can be drawn upon informatively here. My argument is that what occurs prior to the racial and aristocratic senses of the term “good” suggested by Nietzsche as residing genealogically with the concept of the “good life,” is more deeply, an elevated sense of life-worth that humans in the West have historically ascribed to themselves over and above the life-worth of non-human animals. Following this, when the meaning of the term “war” is explained by legal and political theorists with reference to either the concepts of survival or the good life, the linguistic and conceptual use of the term war already contains within it a value-laden human-animal distinction and the primary violence of species war. Survival   and  the  biological   imperative   (survive!)  maybe   seen  as components of a concept of “war” broadly defined. For non-human animals the killing and violence that takes place between them (and with respect to their eating of plant life) may be viewed not as species war but merely as action driven by the biological imperative. However, for humans the acts of killing and violence directed at non-human animals can be understood as species war. While such violence and killing may be thought to be driven, in part, by the biological imperative, these acts also take place within the context of normative judgments made with respect to a particular notion of the good often drawing upon a cosmic hierarchy of life-value established by religious theories of creation or scientific theories of evolution. 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. 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. 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 philosophical conceptions about the relative values of forms of life. Playing out through history are distinctions and hierarchies of life-value that are extensions 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 normalized 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. 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 norm-alization.

#### And anthropocentrism ensures unimaginable suffering and the unending slaughter of billions per year – this categorically outweighs

Best 7 – Associate Professor at the University of Texas in the Department of Humanities and Philosophy (Steven, “Eternal Treblinka: Our Treatment of Animals and the Holocaust, by Charles Patterson” *Journal for Critical Animal Studies*, <http://www.criticalanimalstudies.org/JCAS/Journal_Articles_download/Issue_7/bestpatterson.pdf>)

Too manypeople with pretences to ethics, compassion, decency, justice, love, and other stellar values of humanity at its finestresist the profound analogies between animal and human slavery and animal and human holocausts, in order to devalue or trivialize animal suffering and avoid the responsibility of the weighty moral issues confronting them. The moral myopia of humanism is blatantly evident when people who have been victimized by violence and oppression decry the fact that they “were treated like animals” – as if it is acceptable to brutalize animal, but not humans. If there is a salient disanalogy or discontinuity between the tyrannical pogroms launched against animals and humans, it lies not in the fallacious assumption that animals do not suffer physical and mental pain similar to humans, but rather that animals suffer more than humans, both quantitatively (the intensity of their torture, such as they endure in fur farms, factory farms, and experimental laboratories) and qualitatively (the number of those who suffer and die). And while few oppressed human groups lack moral backing, sometimes on an international scale, one finds not mass solidarity with animals but rather mass consumption of them. As another Nobel Prize writer in Literature, South African novelist writer J. M. Coetzee, forcefully stated: “Let me say it openly: we are surrounded by an enterprise of degradation, cruelty, and killing which rivals anything the Third Reich was capable of, indeed dwarfs it, in that ours is an enterprise without end, self-regenerating, bringing rabbits, rats, poultry, livestock ceaselessly into the world for the purpose of killing them.”37 Every year, throughout the world, over 45 billion farmed animals currently are killed for food consumption.38 This staggering number is nearly eight times the present human population. In the US alone, over 10 billion animals are killed each year for food consumption – 27 million each day, nearly 19,000 per minute. Of the 10 billion land animals killed each year in the US, over 9 billion are chickens; every day in the US, 23 million chickens are killed for human consumption, 269 per second. In addition to the billions of land animals consumed, humans also kill and consume 85 billion marine animals (17 billion in the US).39 Billions more animals die in the name of science, entertainment, sport, or fashion (i.e., the leather, fur, and wool industries), or on highways as victims of cars and trucks. Moreover, ever more animal species vanish from the earth as we enter the sixth great extinction crisis in the planet’s history, this one caused by human not natural events, the last one occurring 65 million years ago with the demise of the dinosaurs and 90% of all species on the planet. It is thus appropriate to recall the saying by English clergyman and writer, William Ralph Inge, to the effect that: "We have enslaved the rest of the animal creation, and have treated our distant cousins in fur and feathers so badly that beyond doubt, if they were able to formulate a religion, they would depict the Devil in human form."

The construction of industrial stockyards, the total objectification of nonhuman animals, and the mechanized murder of innocent beings should have sounded a loud warning to humanity that such a process might one day be applied to them, as it was in Nazi Germany. If humans had not exploited animals, moreover, they might not have exploited humans, or, at the very least, they would not have had handy conceptual models and technologies for enforcing domination over others. “A better understanding of these connections,” Patterson states, “should help make our planet a more humane and livable place for all of us – people and animals alike, A new awareness is essential for the survival of our endangered planet.”40

#### The alternative is a refusal of sovereign power to draw lines between inside and outside – absolutism’s key

Edkins and Pin-Fat 05. Jenny Edkins, professor of international politics at Prifysgol Aberystwyth University (in Wales) and Veronique Pin-Fat, senior lecturer in politics at Manchester Universit, “Through the Wire: Relations of Power and Relations of Violence,” Millennium - Journal of International Studies 2005 34: pg. 14

One potential form of challenge to sovereign power consists of a refusal to draw any lines between zoe- and bios, inside and outside.59 As we have shown, sovereign power does not involve a power relation in Foucauldian terms. It is more appropriately considered to have become a form of governance or technique of administration through relationships of violence that reduce political subjects to mere bare or naked life. In asking for a refusal to draw lines as a possibility of challenge, then, we are not asking for the elimination of power relations and consequently, we are not asking for the erasure of the possibility of a mode of political being that is empowered and empowering, is free and that speaks: quite the opposite. Following Agamben, we are suggesting that it is only through a refusal to draw any lines at all between forms of life (and indeed, nothing less will do) that sovereign power as a form of violence can be contested and a properly political power relation (a life of power as potenza) reinstated. We could call this challenging the logic of sovereign power through refusal. Our argument is that we can evade sovereign power and reinstate a form of power relation by contesting sovereign power’s assumption of the right to draw lines, that is, by contesting the sovereign ban. Any other challenge always inevitably remains within this relationship of violence. To move outside it (and return to a power relation) we need not only to contest its right to draw lines in particular places, but also to resist the call to draw any lines of the sort sovereign power demands.

The grammar of sovereign power cannot be resisted by challenging or fighting over where the lines are drawn. Whilst, of course, this is a strategy that can be deployed, it is not a challenge to sovereign power per se as it still tacitly or even explicitly accepts that lines must be drawn somewhere (and preferably more inclusively). Although such strategies contest the violence of sovereign power’s drawing of a particular line, they risk replicating such violence in demanding the line be drawn differently. This is because such forms of challenge fail to refuse sovereign power’s line-drawing ‘ethos’, an ethos which, as Agamben points out, renders us all now homines sacri or bare life.

#### Its try or die for the neg – The standpoint of the animal epitomizes the failure with status quo politics. Democratic politics has only worked to further the dominant of the non-human. The only thing utopian is believing that the status quo will work.

**Calarco 8** – Ph.D, SUNY Binghamton, Associate Professor of Philosophy at Fullerton University (Matthew, “Zoographies: The Question of the Animal from Heidegger to Derrida” p.95-97)

The reader who takes up careful study of Agamben’s work from this angle, seeking answers to sub 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. Despite the enormous empirical 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 (animal) life from properly political (human) life. Even if democratic regimes maintaining 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 of the law or in the refugee crisis that accompanies the decline of nation-states. Such states of exception are, Agamben argues (following Walter 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, democracy and sovereignty but creating an altogether different form of political life.

Agamben’s work faces two important challenges at this level. On the one hand, neohumanists will (justifiably) wonder whether Agamben’s “coming community” and rejection of the humanist tradition in favor of a nonsovereign and nonjuridical 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 lkkley see Agamebn’s project as being constituted by a false dilemma between humanist democracy and a nonessentialist 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, in siting 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 though of being with Others that is similar to Agamben’s coming community.

I should say that I find neither of these critical perspectives particularly persuasive and that I believe Agamben offers us overwhelmingly persuasive accounts of the limits of current forms of democracy and humanism. Furthermore, it should be noted that there are moments throughout his work where he gives instances of how his alternative thoughts of politics *can* be actualized in concrete circumstances. But even the most charitable reading of his work must acknowledge that in terms of the kinds of questions posed by neohumanists and deconstructionists, much remains to be worked out at the theoretical and concrete political level in Agamebn’s project. And if the scope of this discussion were limited to an anthropocentric politics, I would argue that the questions and criticisms raised by neohumanists and deconstructionists are very difficult 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 extensionist manner so as to bring animals within the sphere of moral and political considerability do not seem to believe that an ethics and a politics **that genuinely respects animal life can be accomplished within the confines of the traditions they use.**

Of this political terrain, neohumanist 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 (as is sometimes done), such gestured 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 sabatoge 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 F.B.I. and subject to outrageously unjust penalties and prison sentences. In view of the magnitude of such problems, animal activists are currently embroiled in a stricter protracted debate over the merits of 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 nonhuman life (an expansion of neohumanism 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 nonhuman life is clearly the unrealistic and utopian thinker, for what sings 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 as to include and give direct consideration to beings beyond the human?

### 1nc 2

#### Detention takes three forms—criminal, preventative, and interrogative—they have to specify which one they target—failure to specify leads to bad advocacy skills and causes misperception that turns the aff

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(Monica, “REALITY CHECK: DETENTION IN THE WAR ON TERROR”, 62 Cath. U.L. Rev. 325, Winter 2013, lexis, dml)

Our conceptual vocabulary has not kept pace with experience. Although legal experts, the press, and the public rely on one generic term, "detention," [\*328] the U.S. executive branch has actually practiced **at least three different modes of detention** in the "war on terror": criminal detention, national security detention for the purpose of prevention (preventive detention), and national security detention for the purpose of interrogation (interrogative detention). Reliance on an overgeneralized term **glosses over important distinctions with** serious practical effects. When the general term "detention" in current usage is taken to mean only "criminal detention," it reflects a misunderstanding of what national security experts are actually working on. Framing the issue so narrowly **leads to limited effectiveness** in persuasion or diagnosis, insofar as it fails to take into account some of the organizational and ethical features of the domain of national security or **results in** misrecognition **of some kinds of executive branch conduct**. Reconceiving detention based on observation of its actual practice should **yield clarity and specificity that will serve** future advocacy efforts.

### 1nc 3

**Text –**

Congress should propose and three fourths of the states should ratify an amendment to the United States Constitution that the united states federal government should provide trials with a preponderance of the evidence standard for individuals in military detention.

**Amending the constitution solves – it establishes clear and credible war powers authority**

**Goldstein 88** (Yonkel, J.D. – Stanford Law School and Has the Sweetest of Names, “The Failure of Constitutional Controls over War Powers in the Nuclear Age: The Argument for a Constitutional Amendment,” Stanford Law Review, July, 40 Stan. L. Rev. 1543, Lexis)

The scope of the **war-making powers** of the executive and legislative branches of the United States government, in the context of the nuclear age, is **unclear**. The tremendous destructive power of modern arsenals, especially that of atomic weapons, makes this issue one of paramount importance. As the dangers of war have increased exponentially since the time when the Constitution was ratified, the efficacy of the constitutional safeguards which were intended to limit the likelihood of war has **dwindled dramatically**. The lack of a major nuclear war, so far, may suggest to some that the legal system of controls over United States war powers is operating well. As Professor Spanier states, however, in discussing the principle of civilian control of the military, factors which are extrinsic to the legal system have been primarily responsible for the American military's subservience to civilians. n1 My argument is an analogous one, namely that the system of checks and balances, designed to ensure that entry into war either be in response to an emergency thrust upon the nation or the result of a thorough examination of policy alternatives and considerations, is no longer functioning. Consequently, credit for the lack of nuclear war since World War II belongs more to factors extrinsic to the legal system designed to control American war power than it does to [\*1544] any workable system intended to regulate that power. The constitutional war-making provisions have now been tested; under modern-day pressures they have been found wanting. As a result, it is time to **amend the Constitution** for both **practical** and **symbolic reasons**. A constitutional amendment would have a **consciousness-raising effect** on the American people. It would signal a **clear change from immediate past precedent** and, simultaneously, **legitimate that change** in the **most authoritative way possible** under our system. The proposed amendment would both (1) clearly establish congressional authority to set policy in all matters relating to the preparation and execution of war, hostilities, aggression, or defense of the United States, American citizens, and American interests, and (2) establish a private right of action against Congress for its failure to make diligent efforts to ascertain the relevant facts, to debate, and to set policy in this area. The first part of this amendment would help to settle any lingering debate over the proper congressional role in defense matters, yet allow the system to retain the flexibility necessary to execute a sound and responsive defense policy; Congress would be able to delegate responsibility and authority however it sees fit. The second part recognizes the appropriateness of a mechanism to allow United States citizens to stimulate congressional and judicial action in order to protect against the risks of nuclear war; courts would not be empowered to judge substantive legislative decisions, but would be able to ensure that Congress, in reaching those decisions, adhere to constitutional principles. Thus, the courts would function similarly to how they have operated in the due process area.

#### The plan reverses court deference and rules on a political question

Lederman 11 (Martin, Professor of Law – Georgetown University Law Center, “War, Terror, and the Federal Courts, Ten Years After 9/11: Conference\*: Association of American Law Schools' Section on Federal Courts Program at the 2012 AALS Annual Meeting in Washington, D.C.,” American University Law Review, June, 61 Am. U.L. Rev. 1253, Lexis)

Number two: Numerous very important, contested, hotly debated topics have arisen in the last ten years, many of them in the Bush Administration, **involving** for example interrogation techniques, **the scope of detention authority**, habeas review, military commissions, **targeted killings, and the use of force more broadly**. On some of these questions, the federal courts - and the Supreme Court in particular - have had quite a lot to say; and on others, not so much, at least in part because of several different federal courts doctrines that prevent the courts from speaking too much about those. You're all familiar with standing limits, **political questions**, state secrets, etc. We're going to focus particularly on a couple of them, which are immunity doctrines and the weakening of the Bivens n2 and state court sorts of causes of action.

We will also discuss the fact that there are many people who think the federal courts have become too involved at supervising and resolving substantive questions involving the political branches, including some of Judge Kavanaugh's colleagues, who have been particularly vocal about that, engaging in what appears to be a form of resistance to the Supreme Court's Boumediene n3 decision. By contrast, many other people think the courts have not been nearly involved enough at resolving some of the unresolved questions about the scope of interrogation and detention and military commissions and the like, that might be lingering from the last administration, or occurring now in the new administration, such as with respect to use of force. So that's the second broad topic - whether the federal courts have been too timid or too aggressive in this area.

#### Violating the political question doctrine on issues of war power causes a wave of litigation – that destroys the effectiveness of US defense contractors

Isenberg 10 (David, Research Fellow – Independent Institute, “Contractor Legal Immunity and the ‘Political Questions’ Doctrine,” CATO Institute, 1-19, <http://www.cato.org/publications/commentary/contractor-legal-immunity-political-questions-doctrine>)

Carter wrote:

What is the political question doctrine? According to Chief Justice John Marshall, “[q]uestions, in their nature political, or which are, by the constitution and laws, submitted to the executive, can never be made in [the U.S. Supreme Court].” In 2004, the Court held “[s]ometimes .. . the law is that the judicial department has no business entertaining [a] claim of unlawfulness — because the question is entrusted to one of the political branches or involves no judicially enforceable rights. Such questions are said to be ‘nonjusticiable,’ or ‘political questions.’”

What this means is that traditionally courts have deferred to the political branches in matters of foreign policy and military affairs. Policy decisions regarding **the employment of U.S. military forces** in combat belong to the political branches, not the courts. The Supreme Court has held that, due to their “complex, subtle, and professional” nature, decisions as to the “composition, training, equipping, and control of a military force” are “subject always” to the control of the political branches.

Tort suits that challenge the internal operations of these areas of the military are likely to be dismissed as political questions. Yet, notwithstanding the foregoing prohibitions on judicial conduct, the Supreme Court has cautioned, “it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance.” As mentioned earlier, vast precedent exists for judicial involvement in foreign and military affairs. Case law establishes that military decisions are reviewable by federal courts. An assertion of military necessity, standing alone, is not a bar to judicial action. Merely because a dispute can be tied in some way to combat activities does not prevent a court from reviewing it. Although an action arises in a contingency environment, if a case is essentially “an ordinary tort suit” it is well within the competence of the courts to entertain. Courts have underscored the point: no litmus test exists that prohibits judicial action merely because an issue involves the military in some fashion.

Where plaintiffs seek only damages and not injunctive relief, such cases are “particularly judicially manageable.” When such a damages-only lawsuit concerns only a defense contractor (as opposed to the Federal Government), courts have held that such actions do not involve “overseeing the conduct of foreign policy or the use and disposition of military power.” Thus, those actions are less likely to raise political questions than suits against the Government, suits seeking injunctive relief, or both.

Given the enormous amount of money involved in Government contingency contracting and the correspondingly large number of contractors and contractor employees performing GWOT (Global War on Terror) contingency contracts, the number of plaintiffs seeking redress for tortious conduct was certain to rise — and it did. Universally, defendant defense contractors invoked the political question doctrine in order to shield themselves from liability in their performance of GWOT contracts, some with more success than others. The first significant case centered around the tragic events at the Abu Ghraib prison in Iraq.

In Ibrahim v. Titan Corp., Iraqi plaintiffs alleged they were tortured, raped, humiliated, beaten, and starved while in U.S. custody. Apparently fearing a dismissal on sovereign immunity grounds if they sued the U.S. Government, the plaintiffs instead chose to name as defendants the contractors who provided interpreters and interrogators for the prison. The defendants filed a motion to dismiss, alleging the matter involved political questions. The court held the case should not be dismissed at such an early stage on political question grounds, especially because the United States was not a party to the case. Ibrahim is significant because it was the first GWOT case to underscore the need for full factual development of a case prior to an assessment of justiciability.

One particularly interesting point in Carter’s article is this:

Judges and scholars openly speculate about the possible consequences of defense contractor tort liability on the federal procurement process. In Boyle, the Supreme Court warned that “[t]he financial burden of judgments against [] contractors would ultimately be passed through, substantially if not totally, to the United States itself, since defense contractors will predictably raise their prices to cover, or to insure against, contingent liability … .”

Since private military contracting advocates claim that their firms are more cost effective than the government one might reasonably believe that they can be so only by preventing tort suits against them. If the cost of such suits were factored in, the presumed cost effectiveness could conceivably be significantly less, **or perhaps not exist at all**.

Carter asks “is the situation really this dire? Are contractors at a point where, because of increased litigation risks, they will be forced to charge the Government more for their services or elect to not provide services altogether?”

The answers may not be far away. In November 2008, Joshua Eller filed suit in the U.S. District Court for the Southern District of Texas, as a result of injuries he suffered at Balad Air Base, Iraq, while deployed as a contractor employee of KBR from February to November of 2006. The complaint alleges defendants KBR and Halliburton “intentionally and negligently exposed thousands of soldiers, contract employees and other persons to unsafe water, unsafe food, and contamination due to faulty waste disposal systems … .” The complaint also includes allegations of injury from toxic smoke which emanated from an open air burn pit at Balad. The complaint alleges approximately 1,000 other individuals suffered similar injuries and it seeks to combine all of those actions into a single class action lawsuit. More significantly, this action is only one of several suits currently pending that relate to similar KBR activities in Iraq.

**The political question doctrine will be a** major factor in this coming storm of litigation. With the large number of potential plaintiffs compounded by the seriousness of the conduct and injuries alleged, these suits have the potential to dwarf the damages awards previously sought in earlier GWOT cases. Undoubtedly, KBR will seek to raise the political question doctrine as an absolute bar to these and any similar suits.

Defense contractor advocates warn of “deleterious effects” to the mission and the contractor-military relationship if tort suits against war zone defense contractors are allowed to proceed. They argue such tort claims “frustrate” and “conflict with” the Government’s ability to control contingency operations and would result in compromised logistical support and mission jeopardy. Furthermore, many companies, especially smaller ones, could be deterred from seeking contingency contracts. For those contractors who do elect to proceed, they will seek to insulate themselves from liability by either self-insuring or obtaining insurance coverage, if it is available. The argument continues that such costs will then be passed onto the Government in the form of higher contract prices. But, most alarmingly, some defense contractor advocates claim the impact of such suits “would be far more profound than financial” and defense contractors may, out of a fear of being sued, refuse to follow the military’s instructions altogether.

#### That’s key to operational success in Afghanistan

Schwartz 9 (Moshe, Specialist in Defense Acquisition – Congressional Research Service, “Department of Defense Contractors in Iraq and Afghanistan: Background and Analysis,” Congressional Research Service, 8-23, http://fpc.state.gov/documents/organization/128824.pdf)

The Department of Defense (DOD) increasingly relies upon contractors to support operations in Iraq and Afghanistan, which has resulted in a DOD workforce in those countries comprising approximately an equal number of contractors (200,000) as uniformed personnel (194,000). The critical role contractors play in supporting such military operations and the billions of dollars spent by DOD on these services requires operational forces to effectively manage contractors during contingency operations. Lack of sufficient contract management can delay or even prevent troops from receiving needed support and can also result in wasteful spending. Some analysts believe that poor contract management has also played a role in abuses and crimes committed by certain contractors against local nationals, which likely has undermined U.S. counterinsurgency efforts in Iraq and Afghanistan.

DOD officials have stated that the military’s experience in Iraq and Afghanistan, coupled with Congressional attention and legislation, has focused DOD’s attention on the importance of contractors to operational success. DOD has taken steps to improve how it manages and oversees contractors in Iraq and Afghanistan. These steps include tracking contracting data, implementing contracting training for uniformed personnel, increasing the size of the acquisition workforce in Iraq and Afghanistan, and updating DOD doctrine to incorporate the role of contractors. However, these efforts are still in progress and could take three years or more to effectively implement.

#### Cross apply their Morgan impact – its an Afghanistan, not Iraq, impact which means only we access it

### 1nc 4

#### Last off is facts—

#### Facts are meaningless. Their internal link chains are factoids, which are worse. 1ac was detrimental to the cause of their position.

Schlag ’13 Pierre Schlag, “Facts (The),” his blog, 1/28/2013, http://brazenandtenured.com/2013/01/28/facts-the/

But let me explain about the facts. First, notice, that the most factish of facts (apologies to Latour) are actually factoids—trivial data bits shorn of any actual narrative. CNN had it down cold: “America has had five presidents who ate fish for breakfast.” What, I ask you, could you possibly do with that qua fact? Still, Americans like facts. It was Joe Friday on Dragnet who first said, “all we want are the facts, ma’am.” Really? That’s all? I don’t think so. He was on a mission. He wanted facts on a mission. And we, the viewers, did too. So I have to say, as a preliminary matter, things already don’t look too good for the facts. Indeed, the possibility that in their most prototypical factishisness, facts are nearly useless while in their most desirable state they are on a mission—well, that’s not an auspicious start. Things get worse. In law and social science (that’s my domain limit here—I feel really cramped) facts generally function as poseurs. The facts, are nearly always posing as the truth about “what-is-actually-going-on.” Facts are frequently presented as “the-real-story” or “the bottom line.” One is no doubt supposed to conclude from this that “facts are facts”—that they are the veritable bedrock of truth. But notice that this doesn’t make any sense. Notice that the “bottom line” is an accounting metaphor. Consider that, “the real story” is an oxymoron deliberately composed of both truth and fiction. Note that “what-is-actually-going-on” is a problematic state hanging precariously on the ungrounded and notoriously unreliable reality/appearance pair. All of this is to say, that the appeal of “getting down to the facts,” (or some such thing) often rests on situating the facts in some initially alluring rhetorical space (e.g. “the real story” “the bottom line”) that turns out, upon further inspection, to be constructed of images, metaphors or fictions of questionable philosophical countenance. (See, Nietzsche, On Lies and Truth in a Non-Moral Sense) Now, it’s not that these metaphors, images or fictions turn facts into non-facts. But still, I ask you: what could be more humbling to a fact then to learn that its appeal rests upon a fiction? Not only do facts frequently function as poseurs, but, when they are at their most factish, they’re often not all that interesting. Factish facts don’t really tell you much of anything you want to know. Imagine a party. Here are some exemplary factish facts: There were 19 people at the party. 9 were women. 10 were men. While the party was happening, gravity exercised a constant force of 32 feet per second/per second. Everyone standing stayed connected to the ground. Not the greatest narrative is it? And notice here that if you stick strictly to the facts (if you admit only of truly factish facts) adding more of these little items will not markedly improve your story line. (For you editors of university press books and law review articles, please pay special attention here.) The only time facts are really interesting (remember law and social science is the domain limit) is when they’re something more than just the facts. Go back to the party. Here’s another fact: Jill left the party with Tom. This fact is more interesting. Well, mildly so. With this sort of fact, you can start imagining possible implications (amorous, murderous, whathaveyou). But note that now we’re no longer talking about “just the facts.” We’re talking about facts with implications, facts with attitude. Why then are facts ever interesting? Well, ironically it’s because they’re not functioning as “just facts,” but something more.

#### There is no justification for reading the 1AC; Information is uniquely dissuasive — vote neg.

Baudrillard, ’92 (Jean, *Pataphysics of Year 2000*, [online])

Outside of this gravitational pull which keeps bodies in orbit, all the atoms of meaning lose themselves or self-absolve in space. Every single atom follows its own trajectory towards infinity and dissolves in space. This is precisely what we are living in our present societies occupied with the **acceleration of all** bodies, all **messages, all processes** in all possible senses and wherein, via modern media, each event, each narrative, each image gets endowed with the simulation of an infinite trajectory. Every political, historical, cultural fact is invested with a kinetic energy which spreads over its own space and thrusts these facts into a hyperspace where they **lose all meaning** by way of an inability to attain their meaning. It is useless to turn to science-fiction: from this point on, from the here and now, through our computer science, our circuits and our channels, this particle accelerator has definitively disrupted and broken the referential orbit of things. With respect to history, the narrative has become impossible since by definition it is the **potential re-narrativization of a sequence of meaning**. Through the impulse of total diffusion and circulation **each event is liberated for itself only** — each event becomes atomized and nuclear as it follows its trajectory into the void. In order to diffuse itself *ad infinitum,* it has to be fragmented like a particle. This is the way it attains a speed of no-return, distancing it from history once and for all. Every cultural, eventual group needs to be fragmented, disarticulated to allow for its entry into the circuits, each language must be absolved into a binary mechanism or device to allow for its circulation to take place — not in our memory, but in the electronic and luminous memory of the computers. There is no human language or speech (*langage*) that could compete with the speed of light. There is no event that could withstand its own diffusion across the planet. No meaning stands a chance once offered the means of its own acceleration. There is no history that will resist the centrifugal pull of facts or its short-circuiting in real time (in the same order of ideas: no sexuality will resist its own liberation, not a single culture will foreclose its own advancement, no truth will defy its own verification, etc.). Even theory is no longer in the state of "reflecting" on anything anymore. All it can do is to snatch concepts from their critical zone of reference and transpose them to the point of no return, in the process of which theory itself too, passes into the hyperspace of simulation as it loses all "objective" validity, while it makes significant gains by acquiring real affinity with the current system. The second hypothesis, with respect to the vanishing of history, is the opposite of the first, i.e., it pertains not to the acceleration but to the slowing down of processes. This too is derived directly from physics. Matter slows the passage of time. More precisely, time seems to pass very slowly upon the surface of a very dense body of matter. The phenomenon increases in proportion to growth in density. The effect of this slowing down (*ralentissement*) will raise the wavelength of light emitted by this body in a way that will allow the observer to record this phenomenon. Beyond a certain limit, time stops, the length of the wave becomes infinite. The wave no longer exists. Light extinguishes itself. The analogy is apparent in the way history slows down as it brushes up against the astral body of the "silent majorities". Our societies are governed by this process of the mass, and not only in the sociological or demographical sense of the word, but also in the sense of a "critical mass", of going beyond a certain point of no-return. That is where the crucially significant event of these societies is to be found: the advent of their revolutionary process along the lines of their mobility, (they are all revolutionary with respect to the centuries gone by), of their equivalent force of inertia, of an immense indifference, and of the silent power of this indifference. This inert matter of the social is not due to a lack of exchanges, of information or of communication; on the contrary, it is the result of the multiplication and saturation of exchanges. It is borne of the hyperdensity of cities, of merchandise, messages and circuits. It is the cold star of the social, a mass at the peripheries of which history cools out. Successive events attain their annihilation in indifference. **Neutralized and bullet-sprayed by information**, the masses neutralise history retrospect and act as a screen of absorption. They themselves have no history, no meaning, no conscience, no desire. They are potential residues of all history, of all meaning, of all desire. By **inserting themselves into modernity**, all these wonderful things managed to invoke **a mysterious counterpart**, the misappreciation of which has unleashed all current political and social strategies. This time, it's the opposite: history, meaning, progress are no longer able to find their speed or tempo of liberation. They can no longer pull themselves out of this much too dense body which slows down their trajectory, slows down their time to the point from whereon perception and imagination of the future escapes us. All social, historical and temporal transcendence is absorbed via this mass's silent immanence. Already, political events no longer conduct sufficient autonomous energy to rouse us and can only run their course as a silent movie in front of which we all sit collectively irresponsible. That is where history reaches its end, not because of the lack of actors or participants, not due to a lack of violence (with respect to violence, there is always an increasing amount), not due to a lack of events (as for events, there will always be more of them thanks to the role of the media and information!) — but because of a slowing down or deceleration, because of indifference and stupefaction. History can no longer go beyond itself, it can no longer envisage its own finality or dream of its own end, it shrouds or buries itself in its immediate effect, it self-exhausts in special effects, it implodes in current events. Essentially, one can no longer speak of the end of history since it has no time to rejoin its own end. **As its effects accelerate, its meaning inexorably decelerates**. It will end up stopping and extinguishing itself like light and time at the peripheries of an infinitely dense mass... Humanity too, had its big-bang: a certain critical density, a certain concentration of people and exchanges that compel this explosion we call *history* and which is none other than the dispersal of dense and hieratic cores of earlier civilizations. Today, we are living an effect of reversal: we have overstepped the threshold of critical mass with respect to populations, events, information, control of the inverse process of inertia of history and politics. At the cosmic level of things, we don't know anymore whether we have reached this speed of liberation wherein we would be partaking of a permanent or final expansion (this, no doubt, will remain forever uncertain). At the human level, where prospects are more limited, it is possible that the energy itself employed for the liberation of the species (acceleration of birthrates, of techniques and exchanges in the course of the centuries) have contributed to an excess of mass and resistance that bear on the initial energy as it drags us along a ruthless movement of contraction and inertia. Whether the universe infinitely expands or retracts to an infinitely dense and infinitely small core will hinge upon its critical mass (with respect to which speculation itself is infinite in view of the discovery of newer particles). Following the analogy, whether our human history will be evolutionary or involuted will presumably depend upon the critical mass of humanity. Are we to see ourselves, like the galaxies, on a definitive orbit that distances us from each other under the impact of a tremendous speed, or is this dispersal to infinity itself destined to reach an end, and the human molecules bound to draw closer to each other by way of an inverse effect of gravitation? The question is whether a human mass that grows day by day is able to control a pulsation of this genre? Third hypothesis, third analogy. But we are still dealing with a point of disappearance, a point of evanescence, a *vanishing-point,* this time however along the lines of music. This is what I call the stereophonic effect. We are all obsessed with high fidelity, with the quality of musical "transmission" (*rendu*). On the console of our channels, equipped with our tuners, our amplifiers and our baffles, we mix, regulate and multiply soundtracks in search of an infallible or unerring music. Is this, though, still music? Where is the threshold of high fidelity beyond the point of which music as such would disappear? Disappearance would not be due to the lack of music, it would disappear for having stepped beyond this boundary, it would disappear into the perfection of its materiality, into its own special effect. Beyond this point, neither judgement nor aesthetic pleasure could be found anymore. Ecstasy of musicality procures its own end. The disappearance of history is of the same order: there too, we have gone beyond this limit or boundary where, subjected to *factual* and *information-al* sophistication, history as such ceases to exist. Large doses of immediate diffusion, of special effects, of secondary effects, of fading — and this famous Larsen effect produced in acoustics by an excessive proximity between source and receiver, in history via an excessive proximity, and therefore the disastrous interference of an event with its diffusion — create a short-circuit between cause and effect, similarly to what takes place between the object and the experimenting subject in microphysics (and in the human sciences!). All things entailing a certain radical uncertainty of the event, like excessive high fidelity, lead to a radical uncertainty with respect to music. Elias Canetti says it well: "as of a certain point", nothing is true anymore. This is also why the soft music of history escapes us, it disappears under the microscope or into the stereophony of information.

### 1NC Solvency

#### Obama circumvents the plan – he’ll use creative lawyering to IGNORE court-ordered release

Hafetz 13 (Jonathan, Law Professor – Seton Hall University School of Law, “Outrage Fatigue: The Danger of Getting Used to Gitmo,” World Politics Review, <http://www.worldpoliticsreview.com/articles/13311/outrage-fatigue-the-danger-of-getting-used-to-gitmo>)

The congressional transfer restrictions have, to be sure, made it more difficult to close Guantanamo. But it would be a mistake simply to blame Congress for the political logjam. Obama not only repeatedly signed the annual military appropriations bills that created the transfer restrictions, despite periodic veto threats, but he also retains considerable latitude to operate notwithstanding the restrictions.

In addition to barring detainee transfers to the United States, Congress previously prohibited the use of funds to transfer detainees to other countries unless the defense secretary personally certified that the detainee in question would never engage in terrorist activity—a virtually impossible standard to meet. Congress, however, has since amended the National Defense Authorization Act (NDAA) to loosen the transfer restriction. The secretary may now waive that certification requirement and transfer detainees to other countries if he finds that the receiving country will take steps to “substantially mitigate” the risk that the detainee will engage in terrorist activity, and that the transfer is in the national security interests of the United States.

While the current certification requirement undoubtedly complicates the transfer process, it still gives Obama latitude to maneuver. As Carl Levin, chairman of the Senate Armed Services Committee, noted, the modified certification requirement affords “a clear route for the transfer of detainees to third countries.”

Additionally, the NDAA exempts detainees transferred by a court order from the certification requirement. The Obama administration has administratively cleared more than half of the remaining detainees for release. If it conceded their detention was no longer lawful and agreed to court orders for their release, the administration could transfer them outside the existing congressional restrictions. So far, however, the administration has agreed to a court-ordered release in only one case, and that case involved a prisoner suffering from significant mental and physical illness.

The Obama administration has shown no shortage of creative lawyering in justifying U.S. military involvement in Libya and Syria as well as in expanding America’s use of targeted drone strikes. In those instances, the administration has interpreted presidential authority robustly, while narrowly construing congressional attempts to cabin that authority, as in the War Powers Resolution. Yet, when it comes to releasing Guantanamo detainees, the administration remains sheepish. It has failed to apply the same interpretive approach to congressional transfer restrictions despite what the president has described as the clear national security interests in closing the prison. Only external events, such as the hunger strike, now seem to prompt any action. And even there, the urgency tends to dissipate once the public pressure and media attention fades.

#### AND, the plan’s a LIMITED habeas ruling – it’s silent on immigration authority – takes out solvency

Hernández-López 12 (Ernesto, UC Irvine School of Law, “Kiyemba, Guantánamo, and Immigration Law: An Extraterritorial Constitution in a Plenary Power World,” UC Irvine Law Review, Vol. 2, http://www.law.uci.edu/lawreview/vol2/no1/hernandez-lopez.pdf)

While all of the Kiyemba cases raised constitutional issues regarding common law habeas,9 habeas remedies, and separation of powers, they demonstrate that immigration law doctrine provides generous justification for detention even in situations when noncombatants are detained indefinitely.10 In theory, if certiorari were granted in any of the Kiyemba cases, the Supreme Court may provide the next step in habeas doctrine since Boumediene v. Bush found constitutional habeas does protect base detainees.11 In Boumediene the Supreme Court held that habeas extends despite detainees’ noncitizen status and their presence outside domestic borders. Accordingly, before the Kiyemba disputes in 2009, alienage and extraterritorial location were not formal bars to constitutional rights or judicial remedies. This Article argues that by relying on immigration law to justify detentions, the Kiyemba triumvirate suggests immigration law provides courts a way to minimize the effect of Boumediene: extraterritorial habeas for aliens is checked by plenary powers reasoning regarding political questions, alien status, and their location. The Kiyemba cases suggest that the plenary powers doctrine, as applied to aliens detained overseas, limits extraterritorial constitutional protections implied in Boumediene.

The D.C. Circuit’s reasoning sanctioning detention reflects hallmark plenary powers doctrine norms. The Supreme Court effectively agreed with this reasoning, as evident in its denial of certiorari in Kiyemba III. These plenary powers doctrine norms include: deference for political questions, the denial of certain rights to aliens, and that an alien’s physical location precludes rights protection. Even if the Supreme Court did actually rule in a Kiyemba dispute, it would most likely focus on habeas and not limit the immigration law justifications in Court of Appeals’ opinions.12 Nevertheless, the doctrinal consistency of plenary powers effectively has shaped the legal identity of these five Uighurs. They are aliens in overseas detention.

### 1NC Democracy

#### Notions of democratic modeling solidify global inequality by replacing political violence with legal violence---turns the case

Ugo Mattei 3, Alfred and Hanna Fromm Professor of International and Comparative Law, ¶ U.C. Hastings; Professore Ordinario di Diritto Civile, Università di Torino A Theory of Imperial Law: A Study on U.S. Hegemony and the Latin Resistance, ic.ucsc.edu/~rlipsch/pol160A/Mattei.pdf

This essay attempts to develop a theory of imperial law that is able to explain postCold War changes in the general process of Americanization in legal thinking. My claim is that “imperial law” is now a dominant layer of world-wide legal systems.1 Imperial law is produced, in the interest of international capital, by a variety of both public and private institutions, all sharing a gap in legitimacy, sometimes called the “democratic deficit.” Imperial law is shaped by a spectacular process of exaggeration, aimed at building consent for the purpose of hegemonic domination. Imperial law subordinates local legal arrangements world-wide, reproducing on the global scale the same phenomenon of legal dualism that thus far has characterized the law of developing countries. Predatory economic globalization is the vehicle, the all-mighty ally, and the beneficiary of imperial law. Ironically, despite its absolute lack of democratic legitimacy, imperial law imposes as a natural necessity, by means of discursive practices branded “democracy and the rule of law,” a reactive legal philosophy that outlaws redistribution of wealth based on social solidarity.2 At the core of imperial law there is U.S. law, as transformed and adapted after the Reagan-Thatcher revolution, in the process of infiltrating the huge periphery left open after the end of the Cold War. A study of imperial law requires a careful discussion of the factors of penetration of U.S. legal consciousness world-wide, as well as a careful distinction between the context of production and the context of reception3 of the variety of institutional arrangements that make imperial law. Factors of resistance need to be fully appreciated as well.

I. AMERICAN LAW: FROM LEADERSHIP TO DOMINANCE The years following the Second World War have shown a dramatic change in the pattern of world hegemony in the law. Leading legal ideas, once produced in Continental Civilian Europe and exported through the periphery of the world, are now for the first time produced in a common law jurisdiction: the United States.4 There is little question that the present world dominance of the United States has been economic, military, and political first, and legal only in a more recent moment, so that a ready explanation of legal hegemony can be found with a simple Marxist explanation of law as a superstructure of the economy.5 Nevertheless, the question of the relationship between legal, political, and economic hegemony is not likely to be correctly addressed within a cause-and-effect paradigm.6 Ultimately, addressing this question is a very important area of basic jurisprudential research because it reveals some general aspects about the nature of law as a device of global governance.

Observing historical patterns of legal hegemony allows us to critique the distinction between two main patterns of governance through the law (and of legal transplants).7 Scholars of legal transplants have traditionally distinguished two patterns. The first is law as dominance without hegemony, in which the legal system is ultimately a coercive apparatus asserting political and economic power without consent. This area of inquiry and this model have been used to explain the relationship between the legal system of the motherland and that of the colonies within imperialistic colonial enterprises. The opposing pattern, telling a story of consensual voluntary reception by an admiring periphery of legal models developed and provided for at the center, is usually considered the most important pattern of legal transplants. It is described by stressing on the idea of consent within a notion of “prestige.”8

Little effort is necessary to challenge the sufficiency of this basic taxonomy in introducing legal transplants. Law is a detailed and complex machinery of social control that cannot function with any degree of effectiveness without some cooperation from a variety of individuals staffing legal institutions. These individuals usually consist of a professional elite which either already exists or is created by the hegemonic power. Such an elite provides the degree of consent to the reception of foreign legal ideas that is necessary for any legal transplant to occur. Hence, the distinction between imperialistic and non-imperialistic transplants is a matter only of degree and not of structure. In order to understand the nature of present legal hegemony, it is necessary to capture the way in which the law functions to build a degree of consent to the present pattern of international economic and political dominance.9

In this essay I suggest that a fundamental cultural construct of presumed consent is the rhetoric of democracy and the rule of law utilized by the imperial model of governance, 10 triumphant worldwide together with the neo-American model of capitalism developed by the Reagan and Thatcher revolution early in the 1980s. I argue that the last twenty years have produced the triumph in global governance of reactive, politically irresponsible institutions, such as the courts of law, over proactive politically accountable institutions such as direct administrative apparatuses of the State.11

This essay attempts to open a radical revision of some accepted modes of thought about the law as they appear today, at what has been called “the end of history.”12 Its aim is to discuss some ways in which global legality has been created in the present stage of world-wide legal development. It will show how democracy and the rule of law, in the present legal landscape, are just another rhetoric of legitimization of a given international dynamic of power. It will also denounce the present unconscious state in which the law is produced and developed by professional “consent building” elites. The consequences of such unconsciousness are creating a legal landscape in which the law is “naturally” giving up its role of constraining opportunistic behavior of market actors. This process results in the development of faked rules and institutions that are functional to the interests of the great capital and that dramatically enlarge inequality within society. I predict that such a legal environment is unable to avoid tragic results on a global scale such as those outlined in the well-known parable of the tragedy of the commons.13

My object of observation is a legal landscape in transition. I wish to analyze this path of transition from one political setting (the local state) to another political setting (world governance) in which American-framed reactive institutions are asserting themselves as legitimate and legitimating governing bodies, which I call imperial law. Imperial law is the product of a renowned alliance between state and economic institutions, a cooperative game in which a very limited number of powerful players are at play.14 While in the ages of colonialism such political battles for international hegemony were mostly carried on with an open use of force and political violence (in such a way that final extensive conflict between superpowers was unavoidable), in the age of globalization and of economic Empire political violence has been transformed into legal violence.

#### No modeling---their evidence is delusional

Eric Black 12, former reporter for the Star Tribune and Twin Cities blogger, Some ideas to limit the ‘supremacy’ of the U.S. Supreme Court, 11/27/12, www.minnpost.com/eric-black-ink/2012/11/some-ideas-limit-supremacy-us-supreme-court

It seems to be part of our national DNA. We see ourselves as so unlike the rest of the world that we have developed a semi-religious belief in what we call “American exceptionalism.” Maybe the upside is some kind of boost to our collective self-esteem. But one of the downsides is a reluctance to look around the world and see if anyone (especially not France) has a good idea from which we might benefit.

Especially on democracy. We see ourselves as the world’s model for democracy and the “rule of law.” We expect others to copy us, although they have long since stopped doing so with reference to the specifics of how to design a government. We grumble a good deal about the breakdowns in our system, but we are not much open to ideas for improving it.

University of Minnesota political scientist Lisa Hilbink, whose specialties include comparative constitutional systems around the world, said that basically, since the end of World War II, most of the world outside of Latin America came to the conclusion that the U.S. system was “pretty crazy.”

#### Democracy doesn’t solve war

**Rosato 3** -, international relations theory, international security, and qualitative methods, B.A., Cambridge University; M.Phil. Oxford University; M.A., Ph.D., University of Chicago, University of Chicago, (Sebastian, November 2003, “The flawed logic of democratic peace theory” <http://www.scribd.com/doc/15229024/Rosato-Flawed-Logic-of-Democratic-Peace-Theory> ) Jacome

Norm Externalization

The historical record indicates that democracies have often failed to adopt their internal norms of conflict resolution in an international context. This claim rests, first, on determining what democratic norms say about the international use of force and, second, on establishing whether democracies have generally adhered to these prescriptions.

Liberal democratic norms narrowly circumscribe the range of situations in which democracies can justify the use of force. As Doyle (1997, 25) notes, “Liberal wars are only fought for popular, liberal purposes.”This does not mean that they will go to war less often than other kinds of states; it only means that there are fewer reasons available to them for waging war.

Democracies are certainly justified in fighting wars of self-defense. Locke ([1690] 1988), for example, argues that states, like men in the state of nature, have a right to destroy those who violate their rights to life, liberty, and property (269–72). There is considerable disagreement among liberal theorists regarding precisely what kinds of action constitute self-defense, but repulsing an invasion, preempting an impending military attack, and fighting in the face of unreasonable demands all plausibly fall under this heading.Waging war when the other party has not engaged in threatening behavior does not. In short, democracies should only go to war when “their safety and security are seriously endangered by the expansionist policies of outlaw states” (Rawls 1999, 90–91).

Another justification for the use of force is intervention in the affairs of other states or peoples, either to prevent blatant human rights violations or to bring about conditions in which liberal values can take root. For Rawls (1999, 81), as for many liberals, human rights violators are “to be condemned and in grave cases may be subjected to forceful sanctions and even to intervention” (see also Doyle 1997, 31–32, and Owen 1997, 34–35). Mill ([1859] (1984)) extends the scope of intervention, arguing that “barbarous” nations can be conquered to civilize them for their own benefit (see also Mehta 1990). However, if external rule does not ensure freedom and equality, it will be as illiberal as the system it seeks to replace. Consequently, intervention can only be justified if it is likely to “promote the development of conditions in which appropriate principles of justice can be satisfied” (Beitz 1979, 90).

The imperialism of Europe’s great powers between 1815 and 1975 provides good evidence that liberal democracies have often waged war for reasons other than self-defense and the inculcation of liberal values. Although there were only a handful of liberal democracies in the international system during this period, they were involved in 66 of the 108 wars listed in the Correlates of War (COW) dataset of extrasystemic wars (Singer and Small 1994). Of these 66 wars, 33 were “imperial,” fought against previously independent peoples, and 33 were “colonial,” waged against existing colonies. It is hard to justify the “imperial” wars in terms of self-defense. Several cases are clear-cut: The democracy faced no immediate threat and conquered simply for profit or to expand its sphere of influence. A second set of cases includes wars waged as a result of imperial competition: Liberal democracies conquered non-European peoples in order to create buffer states against other empires or to establish control over them before another imperial power could move in. Thus Britain tried to conquer Afghanistan (1838) in order to create a buffer state against Russia, and France invaded Tunisia (1881) for fear of an eventual Italian occupation. Some commentators describe these wars as defensive because they aimed to secure sources of overseas wealth, thereby enhancing national power at the expense of other European powers. There are three reasons to dispute this assessment. First, these wars were often preventive rather than defensive: Russia had made no move to occupy Afghanistan and Italy had taken no action in Tunisia.Awar designed to avert possible action in the future, but for which there is no current evidence, is not defensive. Second, there was frequently a liberal alternative to war. Rather than impose authoritarian rule, liberal great powers could have offered non-European peoples military assistance in case of attack or simply deterred other imperial powers. Finally, a substantial number of the preventive occupations were a product of competition between Britain and France, two liberal democracies that should have trusted one another and negotiated in good faith without compromising the rights of non-Europeans if democratic peace theory is correct.

A third set of cases includes wars waged directly against non-Europeans whose territory bordered the European empires. Because non-Europeans sometimes initiated these wars contemporaries tended to justify them as defensive wars of “pacification” to protect existing imperial possessions. Again, there are good reasons to doubt the claim that such wars were defensive. In the first place, non-Europeans often attacked to prevent further encroachment on their lands; it was they and not the Europeans that were fighting in self-defense. Moreover, there is considerable evidence that the imperial powers often provoked the attacks or acted preventively and exploited local instabilities as a pretext for imposing control on the periphery of their empires (Table 1).

Nor were any of the extrasystemic wars fought to prevent egregious abuses of human rights or with the express purpose of replacing autocratic rule with a more liberal alternative. The “colonial” wars, by definition, were conflicts in which imperial powers sought to perpetuate or reimpose autocratic rule. The “imperial” wars simply replaced illiberal indigenous government with authoritarian rule. When imperial rule was not imposed directly, the European powers supported local elites but retained strict control over their actions, thereby underwriting unjust political systems and effectively implementing external rule. In short, despite protestations that they were bearing the “white man’s burden,” there is little evidence that liberal states’ use of force was motivated by respect for human rights or that imperial conquest enhanced the rights of nonEuropeans.5

There are, then, several examples of liberal states violating liberal norms in their conduct of foreign policy and therefore the claim that liberal states generally externalize their internal norms of conflict resolution is open to question.

### 1NC legitimacy

#### Drones destroy U.S. credibility---outweighs detention

Stephen Holmes 13, the Walter E. Meyer Professor of Law, New York University School of Law, July 2013, “What’s in it for Obama?,” The London Review of Books, <http://www.lrb.co.uk/v35/n14/stephen-holmes/whats-in-it-for-obama>

On the basis of undisclosed evidence, evaluated in unspecified procedures by rotating personnel with heterogeneous backgrounds, the US is continuing to kill those it classifies as suspected terrorists in Somalia, Yemen and Pakistan. It has certainly been eliminating militants who had nothing to do with 9/11, including local insurgents fighting local battles who, while posing no realistic threat to America, had allied themselves opportunistically with international anti-American jihadists. By following the latter wherever they go, the US is allowing ragtag militants to impose ever new fronts in its secret aerial war. Mistakes are made and can’t be hidden, at least not from local populations. Nor can the resentment of surrounding communities be easily assuaged. This is because, even when it finds its target, the US is killing not those who are demonstrably guilty of widely acknowledged crimes but rather those who, it is predicted, will commit crimes in the future. Of course, the civilian populations in the countries where these strikes take place will never accept the hunches of CIA or Pentagon futurologists. And so they will never accept American claims about the justice of Obama’s slimmed-down war on terror, but instead claim the right of self-defence, and this would be true even if drone operators could become as error-free as Brennan once claimed they already are. But of course collateral damage and mistaken-identity strikes will continue. They are inevitable accompaniments of all warfare. And they, too, along with intentional killings that are never publicly justified, will communicate resoundingly to the world that the arbitrary and unpredictable killing of innocent Muslims falls within America’s commodious concept of a just war.

The rage such strikes incite will be all the greater if onlookers believe, as seems likely, that the killing they observe makes relatively little contribution to the safety of Americans. Indeed, this is already happening, which is the reason that the drone, whatever its moral superiority to land armies and heavy weaponry, has replaced Guantánamo as the incendiary symbol of America’s indecent callousness towards the world’s Muslims. As Bush was the Guantánamo president, so Obama is the drone president. This switch, whatever Obama hoped, represents a worsening not an improvement of America’s image in the world.

#### No impact to heg – regional actors can prevent war

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More than two decades after the Cold War dramatically ended, the U.S. maintains a Cold War military. America has a couple score allies, dozens of security commitments, hundreds of overseas bases, and hundreds of thousands of troops overseas. Yet international hegemonic communism has disappeared, the Soviet Union has collapsed, Maoist China has been transformed, and pro-communist Third World dictatorships have been discarded in history's dustbin.

The European Union has a larger economy and population than America does. Japan spent decades with the world's second largest economy. South Korea has 40 times the GDP and twice the population of North Korea. As Colin Powell exclaimed in 1991, "I'm running out of demons. I'm running out of enemies. I'm down to Castro and Kim Il-sung."

Yet America accounts for roughly half of the globe's military outlays. In real terms the U.S. government spends more on the military today than at any time during the Cold War, Korean War, or Vietnam War. It is difficult for even a paranoid to concoct a traditional threat to the American homeland.

Terrorism is no replacement for the threat of nuclear holocaust. Commentator Philip Klein worries about "gutting" the military and argued that military cuts at the end of the Cold War "came back to haunt us when Sept. 11 happened." Yet the reductions, which still left America by far the world's most dominant power, neither allowed the attacks nor prevented Washington from responding with two wars.

And responding with two wars turned out to be a catastrophic mistake. Evil terrorism is a threat, but existential threat it is not. Moreover, the best response is not invasions and occupations — as the U.S. has learned at high cost in both Afghanistan and Iraq. Rather, the most effective tools are improved intelligence, Special Forces, international cooperation, and restrained intervention.

Attempts at nation-building are perhaps even more misguided than subsidizing wealthy industrialized states. America's record isn't pretty. The U.S. wasn't able to anoint its preferred Somali warlord as leader of that fractured nation. Washington's allies in the still unofficial and unstable nation of Kosovo committed grievous crimes against Serb, Roma, and other minorities. Haiti remains a failed state after constant U.S. intervention. The invasion of Iraq unleashed mass violence, destroyed the indigenous Christian community, and empowered Iran; despite elections, a liberal society remains unlikely. After nine years most Afghans dislike and distrust the corrupt government created by the U.S. and sustained only by allied arms.

The last resort of those who want America to do everything everywhere is to claim that the world will collapse into various circles of fiery hell without a ubiquitous and vast U.S. military presence. Yet there is no reason to believe that scores of wars are waiting to break out. And America's prosperous and populous allies are capable of promoting peace and stability in their own regions.

#### Heg doesn’t exist—propagating its myth results in blowback and racist violence

Gulli 13. Bruno Gulli, professor of history, philosophy, and political science at Kingsborough College in New York, “For the critique of sovereignty and violence,” <http://academia.edu/2527260/For_the_Critique_of_Sovereignty_and_Violence>, pg. 5

I think that we have now an understanding of what the situation is: The sovereign everywhere, be it the political or financial elite, fakes the legitimacy on which its power and authority supposedly rest. In truth, they rest on violence and terror, or the threat thereof. This is an obvious and essential aspect of the singularity of the present crisis. In this sense, the singularity of the crisis lies in the fact that the struggle for dominance is at one and the same time impaired and made more brutal by the lack of hegemony. This is true in general, but it is perhaps particularly true with respect to the greatest power on earth, the United States, whose hegemony has diminished or vanished. It is a fortiori true of whatever is called ‘the West,’ of which the US has for about a century represented the vanguard. Lacking hegemony, the sheer drive for domination has to show its true face, its raw violence. The usual, traditional ideological justifications for dominance (such as bringing democracy and freedom here and there) have now become very weak because of the contempt that the dominant nations (the US and its most powerful allies) regularly show toward legality, morality, and humanity. Of course, the so-called rogue states, thriving on corruption, do not fare any better in this sense, but for them, when they act autonomously and against the dictates of ‘the West,’ the specter of punishment, in the form of retaliatory war or even indictment from the International Criminal Court, remains a clear limit, a possibility. Not so for the dominant nations: who will stop the United States from striking anywhere at will, or Israel from regularly massacring people in the Gaza Strip, or envious France from once again trying its luck in Africa? Yet, though still dominant, these nations are painfully aware of their structural, ontological and historical, weakness. All attempts at concealing that weakness (and the uncomfortable awareness of it) only heighten the brutality in the exertion of what remains of their dominance. Although they rely on a highly sophisticated military machine (the technology of drones is a clear instance of this) and on an equally sophisticated diplomacy, which has traditionally been and increasingly is an outpost for military operations and global policing (now excellently incarnated by Africom), they know that they have lost their hegemony.

‘Domination without hegemony’ is a phrase that Giovanni Arrighi uses in his study of the long twentieth century and his lineages of the twenty-first century (1994/2010 and 2007). Originating with Ranajit Guha (1992), the phrase captures the singularity of the global crisis, the terminal stage of sovereignty, in Arrighi’s “historical investigation of the present and of the future” (1994/2010: 221). It acquires particular meaning in the light of Arrighi’s notion of the bifurcation of financial and military power. Without getting into the question, treated by Arrighi, of the rise of China and East Asia, what I want to note is that for Arrighi, early in the twenty-first century, and certainly with the ill-advised and catastrophic war against Iraq, “the US belle époque came to an end and US world hegemony entered what in all likelihood is its terminal crisis.” He continues:

Although the United States remains by far the world’s most powerful state, its relationship to the rest of the world is now best described as one of ‘domination without hegemony’ (1994/2010: 384).

What can the US do next? Not much, short of brutal dominance. In the last few years, we have seen president Obama praising himself for the killing of Osama bin Laden. While that action was most likely unlawful, too (Noam Chomsky has often noted that bin Laden was a suspect, not someone charged with or found guilty of a crime), it is certain that you can kill all the bin Ladens of the world without gaining back a bit of hegemony. In fact, this killing, just like G. W. Bush’s war against Iraq, makes one think of a Mafia-style regolamento di conti more than any other thing. Barack Obama is less forthcoming about the killing of 16-year-old Abdulrahman al-Awlaki, whose fate many have correctly compared to that of 17-year-old Trayvon Martin (killed in Florida by a self-appointed security watchman), but it is precisely in cases like this one that the weakness at the heart of empire, the ill-concealed and uncontrolled fury for the loss of hegemony, becomes visible. The frenzy denies the possibility of power as care, which is what should replace hegemony, let alone domination. Nor am I sure I share Arrighi’s optimistic view about the possible rise of a new hegemonic center of power in East Asia and China: probably that would only be a shift in the axis of uncaring power, unable to affect, let alone exit, the paradigm of sovereignty and violence. What is needed is rather a radical alternative in which power as domination, with or without hegemony, is replaced by power as care – in other words, a poetic rather than military and financial shift.

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#### Now there is no offense, the system is inoperative and trending towards its own destruction – The only question is to cling on as it collapses or let it die.

Prozorov 10. Sergei Prozorov, professor of political and economic studies at the University of Helsinki, “Why Giorgio Agamben is an optimist,” Philosophy Social Criticism 2010 36: pg. 1065

In a later work, Agamben generalizes this logic and transforms it into a basic ethical imperative of his work: ‘[There] is often nothing reprehensible about the individual behavior in itself, and it can, indeed, express a liberatory intent. What is disgraceful – both politically and morally – are the apparatuses which have diverted it from their possible use. We must always wrest from the apparatuses – from all apparatuses – the possibility of use that they have captured.’32 As we shall discuss in the following section, this is to be achieved by a subtraction of ourselves from these apparatuses, which leaves them in a jammed, inoperative state. What is crucial at this point is that the apparatuses of nihilism themselves prepare their demise by emptying out all positive content of the forms-of-life they govern and increasingly running on ‘empty’, capable only of (inflict- ing) Death or (doing) Nothing.

On the other hand, this degradation of the apparatuses illuminates the ‘inoperosity’ (worklessness) of the human condition, whose originary status Agamben has affirmed from his earliest works onwards.33 By rendering void all historical forms-of-life, nihi- lism brings to light the absence of work that characterizes human existence, which, as irreducibly potential, logically presupposes the lack of any destiny, vocation, or task that it must be subjected to: ‘Politics is that which corresponds to the essential inoperability of humankind, to the radical being-without-work of human communities. There is pol- itics because human beings are argos-beings that cannot be defined by any proper oper- ation, that is, beings of pure potentiality that no identity or vocation can possibly exhaust.’34

Having been concealed for centuries by religion or ideology, this originary inoperos- ity is fully unveiled in the contemporary crisis, in which it is manifest in the inoperative character of the biopolitical apparatuses themselves, which succeed only in capturing the sheer existence of their subjects without being capable of transforming it into a positive form-of-life:

[T]oday, it is clear for anyone who is not in absolutely bad faith that there are no longer historical tasks that can be taken on by, or even simply assigned to, men. It was evident start- ing with the end of the First World War that the European nation-states were no longer capa- ble of taking on historical tasks and that peoples themselves were bound to disappear.35

Agamben’s metaphor for this condition is bankruptcy: ‘One of the few things that can be

declared with certainty is that all the peoples of Europe (and, perhaps, all the peoples of the Earth) have gone bankrupt’.36 Thus, the destructive nihilistic drive of the biopolitical machine and the capitalist spectacle has itself done all the work of emptying out positive forms-of-life, identities and vocations, leaving humanity in the state of destitution that Agamben famously terms ‘bare life’. Yet, this bare life, whose essence is entirely con- tained in its existence, is precisely what conditions the emergence of the subject of the coming politics: ‘this biopolitical body that is bare life must itself be transformed into the site for the constitution and installation of a form-of-life that is wholly exhausted in bare life and a bios that is only its own zoe.’37

The ‘happy’ form-of-life, a ‘life that cannot be segregated from its form’, is nothing but bare life that has reappropriated itself as its own form and for this reason is no longer separated between the (degraded) bios of the apparatuses and the (endangered) zoe that functions as their foundation.38 Thus, what the nihilistic self-destruction of the appara- tuses of biopolitics leaves as its residue turns out to be the entire content of a new form-of-life. Bare life, which is, as we recall, ‘nothing reprehensible’ aside from its con- finement within the apparatuses, is reappropriated as a ‘whatever singularity’, a being that is only its manner of being, its own ‘thus’.39 It is the dwelling of humanity in this irreducibly potential ‘whatever being’ that makes possible the emergence of a generic non-exclusive community without presuppositions, in which Agamben finds the possi- bility of a happy life.

[If] instead of continuing to search for a proper identity in the already improper and sense- less form of individuality, humans were to succeed in belonging to this impropriety as such, in making of the proper being-thus not an identity and individual property but a singularity without identity, a common and absolutely exposed singularity, then they would for the first time enter into a community without presuppositions and without subjects.40

Thus, rather than seek to reform the apparatuses, we should simply leave them to their self-destruction and only try to reclaim the bare life that they feed on. This is to be achieved by the practice of subtraction that we address in the following section.

#### Jose Padilla and all those marked ‘outside of law’ prove why the affirmative can never guarantee protection

Tagma 09. Halit Mustafa Tagma, Professor of Political Science and International Relations, Sabanci University, Alternatives: Global, Local, Political, Vol. 34, No. 4 (Oct.-Dec. 2009), pg. 422

The right of sovereignty was the right to take life or let live. And then this new right is established: the right to "make" live and to "let" die.76 Excluded bodies, for Agamben, are made possible by sovereign power that produces bare life. For Foucault, sovereign power is asso- ciated with the taking of life, whereas biopower is associated with the reproduction of life. This puts Foucault in a difficult spot as the power to kill and make live in the age of modernity has seen its extremes: If the power of sovereignty is increasingly on the retreat and disci- plinary power is on the advance, how is it possible to kill? How can murder function in this technology of power, which takes life as both its object and its objective? Given that this power's objective is essentially to make live, how can it let die? How can the power of death, the function of death, be exercised in a political system cen- tered upon bio-power?77 Foucault' s response is that racism is the "precondition to the ex- ercise of such a power: the right to kill."78 State racism is introduced in order to separate livable life from life that can be killed. Wars of the early twentieth century have employed such reasoning, where a statist discourse externalizes and racializes the danger to society that ought to be defeated for the sake of the community. Foucault, in Society Must be Defended, had in mind the biological variant of racist discourse that was portrayed in Nazi Germany and Fascist Italy. However, the theme is alive and well in today's racism, which can be loosely labeled here as "cultural" racism.79 Cultural racism understood in this sense is articu- lated today through a discourse of "civilizations": "our values," "our mode of living," and "proper" human governance. Cultural racism ex- hibits itself in Samuel Huntington 's binary framing of a civilized world (the West) facing an uncivilized world. Orientalist discourse fostered European imperialism in eighteenth- and nineteenth-century Europe through the representation of Middle Eastern peoples as an inferior race. Similarly today, the contemporary representations of Iraqis and Afghanis as threatening subjects, unable to govern themselves, help le- gitimize external military interventions in those societies.80 In launch- ing a war against internal and external threats, one therefore not only betters the "inferior people's lives" but also ensures "the regeneration of one's race" through heroic rituals and nationalist ceremonies that parade the good Western nation and its values.81 None of this is a recent invention. As Timothy Mitchell has ar- gued, the European colonization of Egypt rested on the ability to pro- duce not just a neatly organized society modeled after the military barracks, but the ability of the European to imagine and disseminate a form of representation and identity that was colonizing by nature.82 The articulation of the Egyptian as the racially and culturally inferior other to the Western rational scientific man through an Orientalist discourse, both in Europe and Egypt, was at the core of Egyptian col- onization. The Orient was thought to lack technological and military superiority and was seen as a culture that lacked the ability to produce a rational, orderly society. The imperial encounter with Europe's other was not just to keep the "natives in their huts," but also to "win their hearts and minds." A French military officer after suppressing a rebellion in 1845-1846 in Egypt said: "When we have them in our hands, we will then be able to do many things which are quite im- possible for us today and which will perhaps allow us to capture their minds after we have captured their bodies."83 This logic echoes re- cent news when a US commander in Iraq who works with social sci- entists says, "We're looking at this from a human perspective, from a social scientist's perspective. We're not focused on the enemy. We're focused on bringing governance down to the people."84 The regime of truth of a given society, and the marks of differ- ence on a subject's body, has long informed sovereign power about what forms of life are to be excluded. The US Army's recruitment of social scientists in Afghanistan and Iraq under a program titled "Human Terrain System" (HTS) exemplifies the way in which localized sovereign decisions are informed by a scientific discourse. Under this program, teams of social scientists, most notably anthropologists, are embedded in combat brigades to help the commanders make better decisions with respect to the population in which they are operat- ing.85 The following statement of the overseer of this program serves as an excellent example of the relation between the production of knowledge in the human sciences and its utilization by a bureaucratic apparatus: "Cultural anthropologists are focused on understanding how societies make decisions and how attitudes are formed. They give us the best vision to see the problems through the eyes of the target population."86 David Price's comment on this relation serves my point on this power/knowledge nexus: In observing that "cultural understanding is an endless endeavor that must be overcome leveraging whatever assets are available," the military's choice of "leveraging" beautifully clarifies how the mili- tary conceptualizes anthropologists and others providing occupying troops in Iraq with cultural information: they are seen as priers of knowledge; tools to be used for the extraction and use of knowledge "assets" in ways that military commanders see fit.87 As Mitchell points out, the use of the scientific gaze to discipline, classify, and control the local population goes back to the colonial pe- riod. Today we see the use of scientific discourse in the the US Army's Professional Writing Collection. In an article detailing the HTS, the ad- ministrators of the system draw from the lessons of the French and British experience in colonizing the local population: "Conclusions logically demand that past experience guide our understanding of how best to meet, in a manner that supports our own military objec- tives, the expectations and desires of the people at the heart of such struggles."88 What this means is that the colonial lessons of the past are used today to bring "governance down to the population." Besides the manual Standard Operating Procedures that dictates the minute-to-minute details on disciplining prisoners and Human Ter- rain Systems to classify and discipline populations, there is also a mushrooming psychiatric discipline that has the prisoners as its ob- ject. Allison Howell argues that the psychiatric discourse, as a regime of truth, has pathologized the Guantánamo prisoners such that it "play[ed] a part in the conditions of possibility for indefinite deten- tion."89 Howell shows how the scientific discourse on the mental health of the prisoners has constructed them as "crazy, fanatical mad- men" who are dangerous to themselves and society.90 She argues that this regime of truth has legitimated the indefinite detention of the prisoners. This supports my central argument that the "regime of truth" of biopower supplements sovereign power. This means that tactics of power create the conditions of possibility for the justifica- tion of exceptional sovereign practices. In other words, techniques of power that attempt to individualize, divide, and discipline bodies feed back into and justify the conditions of possibility for the exceptional logic in the articulation of emergency powers - a logic of supplemen- tarity par excellence. All this is not to say that there is a simple chronol- ogy to this logic, and that such affairs occur in abstraction, external to chance, contingency, historicity, interpretation, and the regime of truth of a given society. Instead, the techniques of power go hand in hand with the regime of truth in a given space and time. Exclusion- ary practices and the production of bare life do not operate, as Agam- ben would have us believe, in a uniform and universal manner that gets replicated across time and space, be it in the Greek city-state Nazi Germany. Agamben declares that thanks to sovereign power Ve are all Homo Sacer" Historically and theoretically, however, the articu- lation of the Ve" is at the core of the problem. The prisoners of the war on terror are also subject to standards of classification, categorization, and profiling. In the case of John Phillip Walker Lindh, the son of a white suburban US family, who was captured in the opening of the war in Afghanistan, "justice" was meted out swiftly, and he was given a twenty-year sentence. On the other hand, Jose Padilla, "an American citizen of color," and in the case of thousands of other subjects put on indefinite detention, nor- mal law is put on hold.91 What accounts for this difference are the marks of difference on a subject's body (race, religion, national back- ground, and ideology) that all come in to play at the ground level when petty bureaucrats get to decide who is to be treated according to what standard of operation. The workings of racism can be identi- fied in the speeches of petty bureaucrats at the local level, as in this statement from one of the Tipton Three: I recall that one of them said "you killed my family in the towers and now it's time to get you back." They kept calling us mother fuckers and I think over the three or four hours that I was sitting there, I must have been punched, kicked, slapped or struck with a rifle butt at least 30 or 40 times. It came to a point that I was simply too numb from the cold and from exhaustion to respond to the pain.92 Although the Three were British citizens and had nothing to do with the 9/11 terrorist attacks, they were quickly associated with ter- rorism because of their racial background and apprehension in Af- ghanistan. Despite the fact that they had nothing to do with terrorism, as their release from Guantánamo Bay suggests, their treatment sands as an indication not of senseless sovereign vengeance but of a vengeance informed by a certain racist bias. Their capture, torture, and treatment was all made possible by a prior initial racial profiling that resulted in innocent men being held in captivity. Sovereign vio- lence does not operate in the absence of a regime of truth that iden- tifies those whose bodies could be subjected to violence. As developed in particular, there was an unmistakable racist disposition toward the "different" bodies of the prisoners. As Reid-Henry points out, the flesh of the Oriental, both as an exotic and an inferior sub- ject, probably had something to do with the stripping and beating of Middle Eastern prisoners.93 It may be argued that the decision not to apply the Geneva Con- vention and other standards of legal treatment to the prisoners cap- tured in Afghanistan is representative of an exceptional decision. However, in line with what I have been arguing, such a resolution is not a simple act of deciding on the part of the leading politicomili-tary cadres of a state. This is not to deny the importance of subjects in key positions; however, such decisions do not take place in a space external to interpretation, culture, and history. Furthermore, much of the sovereign decisions, such as "who is to be detained indefi- nitely," are made at the local level based on interpretation of petty bureaucrats. Sovereign decisions are always already informed by historical and cultural understandings as to who counts as a member of the "good species." The "good species," "the inside," and the body politic have been constructed by colonial discourse. As Roxanne Doty has pointed out, colonial discourse has had a vital role in the construction of Western nations. She further points out that race, religion, and other marks of difference have played an important role in national classi- fication.94 The treatment of faraway people as inferior and exotic has played an important role in nation building in its classic sense. There- fore, who counts as a citizen, a "legitimate" member of a "legitimate" nation, is the product and effect of centuries of interaction of the West with its others. Understood in this sense, sovereign decisions (whether made at the top or bottom level) are informed and shaped by a cultural and colonial history. This is neglected in Agamben's grand analysis of Western politics. Therefore, sovereign power needs the classification, hierarchization, and othering provided by a regime of truth in order to conduct its violent power. Only certain types of peo- ple could be rendered as bare life and thrown into a zone of indis- tinction. Understood this way, it is easier to comprehend the "smooth" production of homines sacri out of Middle Eastern subjects.

#### a.) Legitimate violence – the sole focus on positive law glosses over the ethical conceptions behind law. However, the two are inseparable. Before we make policies over what ‘legitimate violence’ is, we make formulations over which lives are valuable and which lives are not. Their sole focus on policy makes it impossible to interrogate or understand the broader underpinnings of law

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In everyday speech, in the words of the media, politicians, protestors, soldiers and dissidents, the language of war is linked to and intimately bound up with the language of law. That a war might be said to be legal or illegal, just or unjust, or that an act might be called “war” rather than terror or crime, displays aspects of reference, connection, and constitution in which the social meaning of the concepts we use to talk about and understand war and law are organised in particular ways. The manner in which specific terms (i.e. war, terror, murder, slaughter, and genocide) are defined and their meanings ordered has powerful and bloody consequences for those who feel the force and brunt of these words in the realm of human action. In this paper I argue that the juridical language of war contains a hidden foundation – species war. That is, at the foundation of the Law of war resides a species war carried out by humans against non-human animals. At first glance such a claim may sound like it has little to do with law and war. In contemporary public debates the “laws of war” are typically understood as referring to the rules set out by the conventions and customs that define the legality of a state’s right to go to war under international law. However, such a perspective is only a narrow and limited view of what constitutes the Law of war and of the relationship between law and war more generally. Here the “Law” of the “Law of war” needs to be understood as involving something more than the limited sense of positive law. The Law of war denotes a broader category that includes differing historical senses of positive law as well as various ethical conceptions of justice, right and rights. This distinction is clearer in German than it is in English whereby the term Recht denotes a broader ethical and juristic category than that of Gesetz which refers more closely to positive or black letter laws.

1 To focus upon the broader category of the Law of war is to put specific (positive law) formulations of the laws of war into a historical, conceptual context. The Law of war contains at its heart arguments about and mechanisms for determining what constitutes legitimate violence. The question of what constitutes legitimate violence lies at the centre of the relationrship between war and law, and, the specific historical laws of war are merely different juridical ways of setting-out (positing) a particular answer to this question. In this respect the Law of war (and thus its particular laws of war) involves a practice of normative thinking and rule making concerned with determining answers to such questions as: what types of coercion, violence and killing may be included within the definition of “war,” who may legitimately use coercion, violence and killing, and for what reasons, under what circumstances and to what extent may particular actors use coercion, violence and killing understood as war? When we consider the relationship between war and law in this broader sense then it is not unreasonable to entertain the suggestion that at the foundation of the Law of war resides species war. At present, the Law of war is dominated by two cultural-conceptual formulations or discourses. The Westphalian system of interstate relations and the system of international human rights law are held to be modern foundations of the Law of war. In the West, most people’s conceptions of what constitutes “war” and of what constitutes a “legitimate” act of war are shaped by these two historical traditions. That is to say, these traditions have ordered how we understand the legitimate use of violence. 2

#### b.) Agency – focusing on only macro level change obscures how we, as individuals, participate in violence everyday of our lives. Just like complicit citizens in Nazi Germany, failure to confront anthropocentrism guarantees violence. Their view represents a delusional belief based on the banality of individual violence within an inherently violent system

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In one sense, the human individual’s modern complicity in environmental violence represents something of a bizarre symmetry to Hannah Arendt’s notion of the ‘banality of evil’ (Arendt, 1994). For Arendt, the Nazi regime was an emblem of modernity, being a collection of official institutions (scientific, educational, military etc.) in which citizens and soldiers alike served as clerks in a bureaucratic mechanism run by the state. These individuals committed evil, but they did so in a very banal manner: fitting into the state mechanism, following orders, filling in paperwork, working in factories, driving trucks and generally respecting the rule of law. In this way perhaps all individuals within the modern industrial world carry out a banal evil against the environment simply by going to work, sitting in their offices and living in homes attached to a power grid. Conversely, those individuals who are driven by a moral intention to not do evil and act so as to save the environment, are drawn back into a banality of the good. By their ability to effect change in only very small aspects of their daily life, or in political-social life more generally, modern individuals are forced to participate in the active destruction of the environment even if they are the voices of contrary intention. What is ‘banal’ in this sense is not the lack of a definite moral intention but, rather, the way in which the individual’s or institution’s participation in everyday modern life, and the unintentional contribution to environmental destruction therein, contradicts and counteracts the smaller acts of good intention.

#### Their sole focus on governmental action is flawed – the world only exists in terms of individual power relations, altering our own practices are a necessary prerequisite

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The "world," as we perceive it today, did not exist in times past. It does not exist today. There is no such thing as the global "one world." The world can only exist in the locations and experiences revealed through and in human relationships. It is often that we think that to change the world it is necessary to change the way power is exercised in the world; so we go about the business of exposing and denouncing the many power configurations that dominate. Power indeed does lie at the core of human misery, yet we blind ourselves if we regard this power as the power out there. Power, when all the complex networks of its reach are untangled, is personal; power does not exist out there, [\*630] it only exists in relationship. To say the word, power, is to describe relationship, to acknowledge power, is to acknowledge our subservience in that relationship. There can exist no power if the subservient relationship is refused--then power can only achieve its ambitions through its naked form, as violence. Changing the world therefore is a misnomer for in truth it is relationships that are to be changed. And the only relationships that we can change for sure are our own. And the constant in our relationships is ourselves--the "I" of all of us. And so, to change our relationships, we must change the "I" that is each of us. Transformations of "structures" will soon follow. This is, perhaps, the beginning of all emancipations. This is, perhaps, the essential message of Mahatmas.

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### solvency

#### Specific to the plan, there are political costs to NOT circumventing – the public overwhelming wants Obama to detain prisoners and ignore the court

Hernández-López 12 (Ernesto, UC Irvine School of Law, “Kiyemba, Guantánamo, and Immigration Law: An Extraterritorial Constitution in a Plenary Power World,” UC Irvine Law Review, Vol. 2, http://www.law.uci.edu/lawreview/vol2/no1/hernandez-lopez.pdf)

*In theory*, court-ordered habeas release from the extraterritorial jurisdiction of Guantánamo *could* result in their release, but the doctrinal challenges to this are substantial. Put simply, the judiciary does not find that developing this doctrine is as important as the challenges it creates, even if it effectively turns an eye away from the likelihood of indefinite detention. At the Court of Appeals and Supreme Court levels, the judiciary appears hesitant to make new extraterritorial rights determinations, which would be the outcome of a court order to release them from a U.S. base in Cuba. Similarly, such an order would potentially meddle with diplomatic efforts, upsetting separation of powers. Kiyemba II clearly shows that the judiciary will not question or try to check this executive power. To resettle these men, the executive negotiates with the consular officers from diplomatic corps from countries other than China. Moreover, the Kiyemba III petition asks that a habeas remedy, in the form of release from Guantánamo, requires domestic entry into the United States. As described below, this can be achieved with the executive’s authority to parole aliens into the United States. However, this requires the political will of the President and the Department of Homeland Security. Given popular resistance of Americans and lawmakers to relocating Guantánamo detainees domestically, this seems unlikely for now. More generally, the Obama administration has eliminated plans to create a new detention center in Illinois for base inmates or to try them in domestic courts because of the political fallout.204 This resistance is fueled by popular and public anxieties about the War on Terror and the judiciary’s role in this conflict.205 The problem here remains that the law defers solutions to the political branches. National and global politics inhibit the development of these solutions. The detainees, the United States, and China all resist the options provided so far.

#### Motive – Obama wants to maintain detention authority – he’s willing to use immigration doctrine – this takes out every court advantage

Chow 11 (Samuel, J.D. – Benjamin N. Cardozo School of Law, “The Kiyemba Paradox: Creating a Judicial Framework to Eradicate Indefinite, Unlawful Executive Detentions,” Cardozo J. Of Int’l & Comp. Law, Vol. 19, http://www.cjicl.com/uploads/2/9/5/9/2959791/cjicl\_19.3\_chow\_note.pdf)

The government’s arguments are seemingly driven by its desire to maintain control over an area of law which it has traditionally regulated, that is, the determination of which individuals may or may not enter the United States. That goal is arguably justified. However, it must still be reconciled with the fact that the “Great Writ” is one of the most important checks the courts have on arbitrary executive detention.188 By using immigration to limit the writ’s functional application, the government is severely limiting the ability of courts to protect the liberty interests of detainees courts have on arbitrary executive detention.

#### Comparative evidence – immigration authority TRUMPS the plan’s habeas ruling

Vaughns 13 (Katherine L., Professor of Law – University of Maryland Francis King Carey School of Law, “Of Civil Wrongs and Rights: Kiyemba v. Obama and the Meaning of Freedom, Separation of Powers, and the Rule of Law Ten Years after 9/11,” Asian American Law Journal, 20 Asian Am. L.J. 7, http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1002&context=aalj)

This Article considers the ramifications of the Kiyemba litigation, focusing particularly on what the case means to our understanding of the rule of law more than ten years after September 11. This Article makes three primary arguments: First, although the Supreme Court provided Guantanamo Bay detainees access to U.S. courts through the writ of habeas corpus, it has failed to provide a meaningful remedy for habeas petitioners, despite ample constitutional and doctrinal authority for doing so. This rights-remedy gap is problematic from a rule of law standpoint, and the gap is well illustrated by the Kiyemba litigation.8 Second, the Court’s failure to consider the merits of the case, thus allowing a problematic lower court opinion to stand, has perpetuated confusion in a doctrinal area of constitutional, political, and rhetorical significance. A dissent to the per curiam dismissal would, at the very least, have served the significant purpose of articulating core constitutional values. Finally, the D.C. Circuit’s application of immigration law to the habeas remedy question in its reinstated opinion in Kiyemba v. Obama9 effectively trumps the detainees’ constitutional right to obtain release by substituting immigration law’s doctrinally exceptional deference to the Executive for what long has been understood as the core function of habeas corpus: undoing illegal detention by the Executive.

The now-controlling D.C. Circuit opinion offers one viewpoint: habeas relief, when it involves release into the continental United States, is an immigration matter where, by virtue of the branch’s plenary power, the Executive’s decisions govern. The courts, in the D.C. Circuit’s view, have no part to play because immigration issues fall squarely within the Executive’s sovereign prerogative. This approach, I believe, sanctions whatever political remedy the Executive may select—here, diplomatically negotiated resettlement outside of the United States—as a substitute for the legal remedy of release. The D.C. Circuit’s view cannot be correct, I argue, because it would mean that, although a court may find that a detainee’s imprisonment is unlawful,10 that court might be powerless to remedy the unlawful imprisonment. Thus, I offer a view contrary to the D.C. Circuit: in order to accord complete habeas relief particularly where, as here, relocation efforts remain long-ongoing, a habeas court must have the authority to admit foreign nationals into the interior of the United States as a remedy for their unlawful detention. Historically, “the writ of habeas corpus was conceived and used as a control against the unlawful use of executive power.”11 And traditionally, custody of the body transfers to the court in habeas proceedings so that the court may order “the immediate and non-discretionary release of an illegally detained person.”12 Such authority ensures that the courts of this country are able to act in a way that restores the rule of law, so deeply damaged in the months and years following September 11.

### democracy

#### No middle east war – empirics prove that other arab states wont get involved

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Underlying this anxiety was a scenario in which Iraq's sectarian and ethnic violence spills over into neighboring countries, producing conflicts between the major Arab states and Iran as well as Turkey and the Kurdistan Regional Government. These wars then destabilize the entire region well beyond the current conflict zone, involving heavyweights like Egypt. This is scary stuff indeed, but with the exception of the conflict between Turkey and the Kurds, the scenario is far from an accurate reflection of the way Middle Eastern leaders view the situation in Iraq and calculate their interests there. It is abundantly clear that major outside powers like Saudi Arabia, Iran and Turkey are heavily involved in Iraq. These countries have so much at stake in the future of Iraq that it is natural they would seek to influence political developments in the country. Yet, the Saudis, Iranians, Jordanians, Syrians, and others are very unlikely to go to war either to protect their own sect or ethnic group or to prevent one country from gaining the upper hand in Iraq. The reasons are fairly straightforward. First, Middle Eastern leaders, like politicians everywhere, are primarily interested in one thing: self-preservation. Committing forces to Iraq is an inherently risky proposition, which, if the conflict went badly, could threaten domestic political stability. Moreover, most Arab armies are geared toward regime protection rather than projecting power and thus have little capability for sending troops to Iraq. Second, there is cause for concern about the so-called blowback scenario in which jihadis returning from Iraq destabilize their home countries, plunging the region into conflict. Middle Eastern leaders are preparing for this possibility. Unlike in the 1990s, when Arab fighters in the Afghan jihad against the Soviet Union returned to Algeria, Egypt and Saudi Arabia and became a source of instability, Arab security services are being vigilant about who is coming in and going from their countries. In the last month, the Saudi government has arrested approximately 200 people suspected of ties with militants. Riyadh is also building a 700 kilometer wall along part of its frontier with Iraq in order to keep militants out of the kingdom. Finally, there is no precedent for Arab leaders to commit forces to conflicts in which they are not directly involved. The Iraqis and the Saudis did send small contingents to fight the Israelis in 1948 and 1967, but they were either ineffective or never made it. In the 1970s and 1980s, Arab countries other than Syria, which had a compelling interest in establishing its hegemony over Lebanon, never committed forces either to protect the Lebanese from the Israelis or from other Lebanese. The civil war in Lebanon was regarded as someone else's fight. Indeed, this is the way many leaders view the current situation in Iraq. To Cairo, Amman and Riyadh, the situation in Iraq is worrisome, but in the end it is an Iraqi and American fight. As far as Iranian mullahs are concerned, they have long preferred to press their interests through proxies as opposed to direct engagement. At a time when Tehran has access and influence over powerful Shiite militias, a massive cross-border incursion is both unlikely and unnecessary. So Iraqis will remain locked in a sectarian and ethnic struggle that outside powers may abet, but will remain within the borders of Iraq. The Middle East is a region both prone and accustomed to civil wars. But given its experience with ambiguous conflicts, the region **has** also developed an **intuitive** ability to contain its **civil** strife and prevent **local** conflicts from enveloping the entire Middle East.

### legitimacy

#### Not shifting from drones now, their ev says Obama gave a speech saying we’d shift, here’s ev saying he lied

**Lubold and Harris 13**—Foreign Policy

(Gordon and Shane, “The CIA, Not The Pentagon, Will Keep Running Obama's Drone War”, <http://complex.foreignpolicy.com/posts/2013/11/05/cia_pentagon_drone_war_control#sthash.Q9TVnqVS.dpbs>, dml)

In May, the White House leaked word that it would start shifting drone operations from the shadows of the CIA to the relative sunlight of the Defense Department in an effort to be more transparent about the controversial targeted killing program. But six months later, the so-called migration of those operations has stalled, and it is now unlikely to happen anytime soon, Foreign Policy has learned.

The anonymous series of announcements coincided with remarks President Obama made on counterterrorism policy at National Defense University in which he called for "transparency and debate on this issue." A classified Presidential Policy Guidance on the matter, issued at the same time, caught some in government by surprise, triggering a scramble at the Pentagon and at CIA to achieve a White House objective. The transfer was never expected to happen overnight. But it is now clear the complexity of the issue, the distinct operational and cultural differences between the Pentagon and CIA and the bureaucratic politics of it all has forced officials on all sides to recognize transferring drone operations from the Agency to the Defense Department represents, for now, an unattainable goal.