# Round 4—Neg vs Cal EM

## 1NC

### 1nc 1

#### Plan’s restrictions are a paper tiger that reinforces a Trumanite bureaucracy, the vast network of officials responsible for national security policymaking—obfuscates underlying ideologies that jack solvency

**Glennon 14**—Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University [Trumanites=“the network of several hundred high-level military, intelligence, diplomatic, and law enforcement officials within the Executive Branch who are responsible for national security policymaking”]

 (Michael, “National Security and Double Government”, Harvard National Security Journal / Vol. 5, pg 1-114, dml)

The first set of potential remedies aspires to tone up Madisonian muscles one by one **with ad hoc** legislative **and** judicial **reforms**, by, say, narrowing the scope of the state secrets privilege; permitting the recipients of national security letters at least to make their receipt public; broadening standing requirements; improving **congressional oversight of** covert operations, including drone killings **and** cyber operations; **or strengthening** statutory constraints **like** FISA545 and **the War Powers Resolution**.546 Law reviews brim with such proposals. But **their stopgap approach has been tried repeatedly** since the Trumanite network’s emergence. Its futility is now glaring. Why such efforts would be any more fruitful in the future **is hard to understand**. The Trumanites **are committed to the rule of** **law** and their sincerity is not in doubt, but the rule of law to which they are committed **is** largely devoid **of meaningful constraints**.547 Continued focus on legalist band-aids merely buttresses the illusion that the Madisonian **institutions are alive and well**—and with that illusion, **an entire narrative** **premised on the assumption that it is merely a matter of** identifying a solution **and** looking to the Madisonian institutions to effect it. That frame deflects attention from the underlying malady. What is needed, if Bagehot’s theory is correct, is **a fundamental change in** the very discourse **within which U.S. national security policy is made**. For **the question is no longer**: What should the government do? The questions now are: What should be done about the government? What can be done about the government? **What are the responsibilities** not of the government **but** of the people?

#### The impact’s a permanent war economy—the model of the Trumanite bureaucracy is empirically responsible for every policy failure and disastrous authoritarianism—solvency’s a ruse to dissuade public participation

**Glennon 14**—Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University [Trumanites=“the network of several hundred high-level military, intelligence, diplomatic, and law enforcement officials within the Executive Branch who are responsible for national security policymaking”]

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**Enough examples exist to persuade the public** that the network is **subject to** judicial, legislative, **and** executive **constraints**. **This appearance is** important to its operation, for the network **derives legitimacy** from the ostensible authority of the public, constitutional branches of the government. **The appearance of accountability is**, however, largely an illusion fostered by those institutions’ pedigree, ritual, intelligibility, mystery, and superficial harmony with the network’s ambitions. **The** courts**,** Congress**, and** even the presidency **in reality** impose little constraint. Judicial review is negligible; congressional oversight dysfunctional; and presidential control nominal. Past efforts to revive these institutions have thus fallen flat. Future reform efforts are **no more likely to succeed**, relying as they must **upon those same institutions** to restore power to themselves **by exercising** the very power that they lack. External constraints—public opinion and the press—are insufficient to check it. Both are manipulable, and their vitality depends heavily upon the vigor of constitutionally established institutions, which would not have withered had those external constraints had real force. Nor is it likely that any such constraints can be restored **through governmental efforts to inculcate greater civic virtue**, which would ultimately concentrate power even further. Institutional restoration **can come only from an energized body politic**. The prevailing incentive structure, however, **encourages the public to become less,** not more**, informed and engaged.**

To many, **inculcated in the hagiography of Madisonian checks and balances and** oblivious **of the reach of Trumanite power,** the response to these realizations **will be denial**. The image of a double national security government will be shocking. It cannot be right. It **sounds of conspiracy**, “a state within,” and other variations on that theme. “The old notion that our Government is an extrinsic agency,” Bagehot wrote, “still rules our imaginations.”603 That the Trumanite network could have emerged in full public view and without invidious intent makes its presence all the more implausible. Its existence **challenges all we have been taught**.

There is, however, little room for shock. The pillars of America’s double government have long stood in plain view for all to see. We have learned about significant aspects of what Bagehot described—from some eminent thinkers. Max Weber’s work on bureaucracies showed that, left unchecked, the inexorability of bureaucratization **can lead to a “**polar night of icy darkness**” in which humanitarian values are sacrificed for** abstract organizational ends.604 Friedrich Hayek’s work on political organization led him to conclude that “the greatest danger to liberty today comes from the men who are most needed and most powerful in government, namely, **the efficient expert administrators exclusively concerned with what they regard as the public good**.”605 Eric Fromm’s work on social psychology showed how people unconsciously adopt societal norms as their own to avoid anxiety-producing choices, so as to “escape from freedom.”606 Irving Janis’s work on group dynamics showed that the greater a group’s esprit de corps, “the greater the danger that independent critical thinking will be replaced by groupthink, which is likely to result in irrational and dehumanizing actions directed against out-groups.”607 Michael Reisman’s work on jurisprudence has shown how de facto operational codes can quietly arise behind publiclyembraced myth systems, **allowing for governmental conduct that is** not approved openly by the law.608 Mills’ 1956 work on power elites showed that the centralization of authority among officials who hold a common world view and operate in secrecy **can produce a “**military metaphysic**” directed at maintaining a “**permanent war economy**.**”609 One person familiar with Mills’ work was political scientist Malcolm Moos, the presidential speechwriter who five years later wrote President Eisenhower’s prophetic warning.610 “In the councils of government,” Eisenhower said, “we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. **The potential for the** disastrous rise of misplaced power **exists and will persist**.”611

Bagehot anticipated these risks. Bureaucracy, he wrote, is “the most unimproving and shallow form of government,”612 **and the executive that commands it “**the most dangerous.”613 “If it is left to itself,” he observed, “without a mixture of special and non-special minds,” decisional authority “will become technical**,** self-absorbed**,** self-multiplying.”614 The net result is responsibility that is neither fixed nor ascertainable but diffused **and** hidden,615 with implications that are beyond historical dispute. “The most disastrous decisions in the twentieth century,” in Robert Dahl’s words, “turned out to be those made by authoritarian leaders **freed from democratic restraints**.”616

The benefits derived by the United States from double government —enhanced technical expertise, institutional memory and experience, quick-footedness, opaqueness in confronting adversaries, policy stability, and insulation from popular political oscillation and decisional idiosyncrasy —need hardly be recounted. Those benefits, however, have not been costfree. The price lies in well-known risks flowing from centralized power, unaccountability, and the short-circuiting of power equilibria. Indeed, in this regard the Framers thought less in terms of risk than certainty. John Adams spoke for many: “The nation which will not adopt an equilibrium of power must adopt a despotism. There is no other alternative.”617

The trivial risk of sudden despotism, of an abrupt turn to a police state or dictatorship installed with coup-like surprise, **has created a false sense of security** in the United States.618 That a ~~strongman~~ [strongperson] of the sort easily visible in history could suddenly burst forth is not a real risk. The risk, rather, is the risk of slowly tightening centralized power**, growing and evolving organically** beyond public view**,** increasingly unresponsive **to** Madisonian **checks and balances**. Madison wrote, “There are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations.”619 Recent history **bears out his insight**. Dahl has pointed out that in the 20th century—the century of democracy’s great triumph—**some** seventy democracies collapsed **and quietly gave way to** authoritarian regimes.620 That risk correlates with voter ignorance; the term Orwellian has little meaning to a people who have never known anything different, who have scant knowledge of history, civics, or public affairs, and who in any event have likely never heard of George Orwell. “If a nation expects to be ignorant and free, in a state of civilization,” Thomas Jefferson wrote, “it expects what never was and never will be.”621 What form of government ultimately will emerge from the United States’ experiment with double government is uncertain. The risk is considerable, however, **that it will not be a democracy**.

#### Vote neg—criticism is necessary to shift the frame from a question of law to one of politics—the alt enables public interrogation of the underlying assumptions of the aff which comes prior to their impacts

**Rana 11**—Cornell Law

(Aziz, “Who Decides on Security?”, Cornell Law Faculty Working Papers, Paper 87, dml)

If anything, one can argue that the presumptive gulf between elite awareness and suspect mass opinion has generated its own **very dramatic** political **and** legal **pathologies**. In recent years, the country has witnessed **a variety of security crises** **built on** the basic failure of ‘expertise.’195 At present, part of what obscures this fact is the very culture of secret information sustained by the modern security concept. Today, it is commonplace for government officials to leak security material about terrorism or external threat to newspapers **as a method of shaping the public debate**.196 These ‘open’ secrets allow greater public access to elite information and embody a central and routine instrument for incorporating mass voice into state decision-making. But this mode of popular involvement comes at a key cost. Secret information is **generally treated as** worthy of a higher status **than information already present in the public realm** – the shared collective information through which ordinary citizens reach conclusions about emergency and defense. Yet, oftentimes, as with the lead up to the Iraq War in 2003, although **the** actual content **of this secret information is flawed**,197 its status as secret masks these problems and allows policymakers to **cloak their positions in added authority**. This reality highlights the importance of **approaching security information with** far greater collective skepticism; it also means that security judgments may be more ‘Hobbesian’ – marked fundamentally by epistemological uncertainty **as opposed to verifiable fact** – than policymakers admit.

If both objective sociological claims at the center of the modern security concept are themselves profoundly contested, what does this mean for reform efforts that seek to recalibrate the relationship between liberty and security? Above all, it indicates that **the** central problem **with the procedural solutions** offered by constitutional scholars – emphasizing new statutory frameworks **or** greater judicial assertiveness – is that **they mistake a** question of politicsfor one of law. In other words, such scholars ignore the extent to which governing practices are the product of **background political judgments about** threat**,** democratic knowledge**,** professional expertise**, and the necessity for** insulated decision-making. To the extent that Americans are **convinced that they face** continuous danger from hidden and potentially limitless assailants – danger **too complex** for the average citizen to comprehend independently – it is inevitable that institutions (**regardless of legal reform initiatives**) will **operate to** centralize power **in those hands presumed to enjoy military and security expertise**. Thus, any systematic effort **to challenge the current framing** of the relationship between security and liberty **must begin by challenging** the underlying assumptions **about knowledge and security upon which** legal **and** political **arrangements rest**. **Without a** sustained **and** public **debate** **about** the validity of security expertise, its supporting institutions, **and** the broader legitimacy of secret information, **there can be no substantive shift in our constitutional politics**. The problem at present, however, is that no popular base exists to raise these questions. Unless such a base emerges, we can expect our prevailing security arrangements **to become ever more entrenched**.

#### Demands for concrete alternatives and “weighing the aff” LOCKS IN bureaucratic thinking—full rejection’s key

**Frug 84**—Louis D. Brandeis Professor of Law at Harvard Law School

(Gerald, “THE IDEOLOGY OF BUREAUCRACY IN AMERICAN LAW”, 97 Harv. L. Rev 1276 1983-1984, dml)

In my view, modest realists have not rejected bureaucratic theory in favor of sophisticated reflection about the real world as it is. They have instead absorbed the various bureaucratic theories into their view of the world - indeed, into their very definition of themselves. Notice how the various models of bureaucracy **structure the modest realist position**. Like workers in a formalist bureaucracy, modest realists **only value** instrumental**,** programmatic **thinking**; they want to discuss **not your vision of the world** (or your critique of theirs) **but only** your plan of action**, the next** concrete step **you propose**. They are interested in means not ends, facts not values. Although they retain discretion (they have ideas about how to change the world), they accept as given **that most basic decisions are beyond their control**. Moreover, like managers in the expertise model, modest realists have a sense of the world: they know what it's like. As is characteristic of bureaucratic "experts," their self-assurance rests not on specific ideas but on their ability to assert their authority. They act as if they are in **a** **position** **to** choose dispassionately **among alternative courses of action** - as if they are competent to make impersonal judgments.

Like judicial review theorists, modest realists accept bureaucracy as a fact of life, although they are willing to limit its excesses. They too apply a deferential standard when they inquire into bureaucratic institutions because they fear that excessive attempts to change things will just make matters worse. **When asked to decide something, they act like judges:** they "balance," they "weigh,"they shift burdens of proof. Like judges, they leave the person whose ideas they are evaluating in the dark about how their ultimate decision is being made. Finally, like interest-group pluralists, modest realists think that **any proposals for changing bureaucratic institutions** should be framedin terms of legislative action. Whether or not they seek change through interest-group politics themselves, they are careful not to let their political views influence the way they act in their other roles in life. Thus they avoid using their capacity as shareholders to change the nature of corporate policy, insisting only that the corporations in which they invest advance their economic interests. Similarly, as employees, they think it wrong to bring political conflict into the workplace; they believe they owe their company a duty of loyalty as long as they continue to work for it. In their roles as shareholders and employees, in other words, they act like consumers of bureaucratic services: they are free to sell their stock or quit their jobs **but not to use these roles to transform corporate policy**.

Modest realists have so internalized the bureaucratic moves that, as we have seen, **enable them to argue** for **and** against **everything** - that it is hard to know what form of argument might convince them to rethink their approach. They are not likely to pay much attention to the theoretical critique of their position advanced in this Article; **they want to** put theory aside **and** engage in instru-mental decisionmaking. They feel they can handle the subjective/ objective structure of their position simply by making the tough choices as best they can. Indeed, if I were to conclude this Article with some specific suggestion for nonbureaucratic structures - proposing, for example, the kind of worker cooperative adopted in Mondragon 378 - they would **immediately disregard the rest** of the Article **and focus their attention** solely on the proposed alternative. ("Now," they might say, "here's something real to discuss.") In doing so, they would simply substitute their perspective for my own. **Once the argument is** cast in their preferred form, they would evaluate the suggestion **with their fine-tuned skepticism, no doubt** discarding it as"outweighed" by other, more sophisticated factors. That's the way they approach ideas; that's the way they think.

This Article is **designed to criticize this way of thinking**. I am suggesting that the modest realist approach to the world, like those more closely associated with the particular models themselves, is a way people **accommodate themselves to bureaucracy** in thought as well as in action. Modest realists substitute for the subjective/objective structure of theory the equally flexible, equally manipulable subjective/ objective structure of "modifying" **the "status quo."** They treat some aspects of the world **as** objectively necessary and other aspects as open to our joint reconstruction. Like any other subjective/objective structure, however, this is a form of self-deception - perhaps its most pervasive modern form. My critique will mean something to modest realists only if they try to get outside this way of thinking, **only if they criticize it** as a whole. **A suggestion for change** won't cause them to do so; merely reading this Article will probably not cause them to do so either. Instead, they will have to **experience the manipulability of their way of thinking themselves** - perhaps when they try to teach corporate or administrative law - or actually engage in action with others in a way that **makes the possibility of different ways of approaching the world seem real to them**.

Modest realists could abandon their effort **to treat some aspects of the world as fixed** and others as subject to human modification; they could, in other words, abandon their own characteristic attempt to secure a foundation for social life. If they (and other defenders of the bureaucratic form) thought of the world in terms of human, interpersonal contact, the idea of creating separate spheres of permanence and mobility - of creating separate spheres of subjectivity and objectivity of any kind - would seem bizarre. In our daily encounters with others, we recognize that we help create each other through our interactions. It is because these interactions are both necessary and threatening that all of them must continuously be open to reconstruction and revision. In the everyday world of human interdependence, there can be no such thing as a "foundation" that could render (even part of) social life noncontroversial.

It may be hard, however, for modest realists, as well as other readers, to think it worthwhile to give up the search for a foundation that would render human relationships unthreatening. They may, for example, believe that we risk tyranny without such a foundation. 379 It is certainly true that, without foundations, there is no guarantee against tyranny; its likelihood will depend on what people do. But foundations have never protected us against tyranny either; there are no such things. Even the fabrication of foundations hasn't helped; we have never been able to "deduce" from some ultimate foundation the things that are worth fighting for and worth fighting against. Without a (mythical) foundation for our views, we admittedly are (still) unable to say what our choices are based on. But **social choices are certainly not arbitrary**: choices about how to live and what kind of world to create **are neither "**objective**" nor "**subjective**,"** neither certain nor meaningless. They cannot be characterized either way once we recognize how crucially the nature of human relationships and institutions affect who we are. The alternative to "foundations" is **not "chaos" but** the joint reconstruction of social life, the prospect I referred to at the outset as the quest of participatory democracy.380 Acting together, **we could begin to dismantle the structure of bureaucratic organizations -** not all at once**,** but piece by piece. In their place we could substitute forms of human relationship that **better reflect our aspirations for human development and equality**. Numerous suggestions for immediate action have already been made;381 if we focus on the institutions **that currently affect our lives,** we can readily think of more ourselves**.**

### 1nc 2

#### Authority over indefinite detention is the authority TO DETAIN enemy combatants

GLAZIER 06 Associate Professor at Loyola Law School in Los Angeles, California [David Glazier, ARTICLE: FULL AND FAIR BY WHAT MEASURE?: IDENTIFYING THE INTERNATIONAL LAW REGULATING MILITARY COMMISSION PROCEDURE, Boston University International Law Journal, Spring, 2006, 24 B.U. Int'l L.J. 55]

President Bush's decision to consider the terrorist attacks of September 11, 2001, as an act of war has significant legal ramifications. Endorsed by Congress in the Authorization for the Use of Military Force ("AUMF"), n1 this paradigm shift away from treating terrorism as a crime to treating terrorism as an armed conflict allows the United States to exercise "fundamental incidents of waging war." n2 Among these fundamental war powers are the authorities to detain enemy personnel for the duration of hostilities, to subject law of war violators to trials in military tribunals, and to exercise subject matter jurisdiction over the full scope of the law of war, rather than over only those offenses defined in U.S. criminal statutes. n3

#### Restriction is a prohibition on an ACTION – the aff must prohibit indefinite detention

Northglenn 11 (City of Northglenn Zoning Ordinance, “Rules of Construction – Definitions”, http://www.northglenn.org/municode/ch11/content\_11-5.html)

Section 11-5-3. Restrictions. As used in this Chapter 11 of the Municipal Code, the **term "restriction**" shall mean a prohibitive regulation. Any use, activity, operation, building, structure or thing which is the subject of a restriction is prohibited, and no such use, activity, operation, building, structure or thing shall be authorized by any permit or license.

#### The aff restricts immigration authority – it’s a preclusive power of the Executive

Chow 11 (Samuel, JD Benjamin N. Cardozo School of Law, “THE KIYEMBA PARADOX: CREATING A JUDICIAL FRAMEWORK TO ERADICATE INDEFINITE, UNLAWFUL EXECUTIVE DETENTIONS”, 19 Cardozo J. Int'l & Comp. L. 775 2011)

The facts that legitimized the Court's holding in Munaf are substantially different from the facts in Kiyemba. In Kiyemba, the D.C. Circuit Court also held that it did not have the authority to order the petitioners' release into the United States, but for different reasons from those espoused in Munaf. There, the circuit court determined that such release would violate the traditional distribution of immigration authority-a problem that did not exist with the American petitioners in Munaf.2 z As in Munaf, the government concluded that the Kiyemba petitioners' request amounted to a request for "release-plus. ' 23 Unlike Munaf, however, a troubling paradox is raised under the Kiyemba facts as it now stands, the Executive has determined that certain detainees being held unlawfully may, nonetheless, remain indefinitely detained.24 There are three primary elements that contributed to the Uighur 25 plaintiffs' dilemma. First, because of the high risk of torture, the Uighurs could not return to their home country of China.26 Second, diplomatic solutions had failed and no third-party country had been willing to accept them.27 Third, the D.C. Circuit Court determined that release into the United States would violate immigration laws and undermine the Executive's ability to administer those laws. 28 Lacking refuge and possibility of asylum, the Uighurs were forced to remain, indefinitely, as prisoners at Guantanamo Bay.

#### Vote neg

#### 1. Limits – It’s not an authority of the president – they can talk about anything related to the 4 topic areas which makes research impossible.

#### 2. Ground – the courts have NO AUTHORITY to decide to release prisoners – this is necessary to CORE neg args

#### 3. Extra topicality is an independent voting issue – artificially inflates aff ground and forces us to read counterplans to get back to square one.

### 1nc 3

#### The 1AC’s quick-fix solution to the coming apocalypse glosses over the ontological questioning of the human subject. The drive to prevent our inevitable extinction is an example of the same human hubris which has caused these problems.

**Scranton 13**—department of English at Princeton (Roy, November 10th, “Learning How to Die in the Anthropocene”, <http://opinionator.blogs.nytimes.com/2013/11/10/learning-how-to-die-in-the-anthropocene/?_r=1&>,)

The challenge the Anthropocene poses is a challenge not just to national security, to food and energy markets, or to our “way of life” — though these challenges are all real, profound, and inescapable. The greatest challenge the Anthropocene poses may be to our sense of what it means to be human. Within 100 years — within three to five generations — we will face average temperatures 7 degrees Fahrenheit higher than today, rising seas at least three to 10 feet higher, and worldwide shifts in crop belts, growing seasons and population centers. Within a thousand years, unless we stop emitting greenhouse gases wholesale right now, humans will be living in a climate the Earth hasn’t seen since the Pliocene, three million years ago, when oceans were 75 feet higher than they are today. We face the imminent collapse of the agricultural, shipping and energy networks upon which the global economy depends, a large-scale die-off in the biosphere that’s already well on its way, and our own possible extinction. If homo sapiens (or some genetically modified variant) survives the next millenniums, it will be survival in a world unrecognizably different from the one we have inhabited.

Geological time scales, civilizational collapse and species extinction give rise to profound problems that humanities scholars and academic philosophers, with their taste for fine-grained analysis, esoteric debates and archival marginalia, might seem remarkably ill suited to address. After all, how will thinking about Kant help us trap carbon dioxide? Can arguments between object-oriented ontology and historical materialism protect honeybees from colony collapse disorder? Are ancient Greek philosophers, medieval theologians, and contemporary metaphysicians going to keep Bangladesh from being inundated by rising oceans?

Of course not. But the biggest problems the Anthropocene poses are precisely those that have always been at the root of humanistic and philosophical questioning: “What does it mean to be human?” and “What does it mean to live?” In the epoch of the Anthropocene, the question of individual mortality — “What does my life mean in the face of death?” — is universalized and framed in scales that boggle the imagination. What does human existence mean against 100,000 years of climate change? What does one life mean in the face of species death or the collapse of global civilization? How do we make meaningful choices in the shadow of our inevitable end?

These questions have no logical or empirical answers. They are philosophical problems par excellence. Many thinkers, including Cicero, Montaigne, Karl Jaspers, and The Stone’s own Simon Critchley, have argued that studying philosophy is learning how to die. If that’s true, then we have entered humanity’s most philosophical age — for this is precisely the problem of the Anthropocene. The rub is that now we have to learn how to die not as individuals, but as a civilization.

III.

Learning how to die isn’t easy. In Iraq, at the beginning, I was terrified by the idea. Baghdad seemed incredibly dangerous, even though statistically I was pretty safe. We got shot at and mortared, and I.E.D.’s laced every highway, but I had good armor, we had a great medic, and we were part of the most powerful military the world had ever seen. The odds were good I would come home. Maybe wounded, but probably alive. Every day I went out on mission, though, I looked down the barrel of the future and saw a dark, empty hole.

“For the soldier death is the future, the future his profession assigns him,” wrote Simone Weil in her remarkable meditation on war, “The Iliad or the Poem of Force.” “Yet the idea of man’s having death for a future is abhorrent to nature. Once the experience of war makes visible the possibility of death that lies locked up in each moment, our thoughts cannot travel from one day to the next without meeting death’s face.” That was the face I saw in the mirror, and its gaze nearly paralyzed me.

I found my way forward through an 18th-century Samurai manual, Yamamoto Tsunetomo’s “Hagakure,” which commanded: “Meditation on inevitable death should be performed daily.” Instead of fearing my end, I owned it. Every morning, after doing maintenance on my Humvee, I’d imagine getting blown up by an I.E.D., shot by a sniper, burned to death, run over by a tank, torn apart by dogs, captured and beheaded, and succumbing to dysentery. Then, before we rolled out through the gate, I’d tell myself that I didn’t need to worry, because I was already dead. The only thing that mattered was that I did my best to make sure everyone else came back alive. “If by setting one’s heart right every morning and evening, one is able to live as though his body were already dead,” wrote Tsunetomo, “he gains freedom in the Way.”

I got through my tour in Iraq one day at a time, meditating each morning on my inevitable end. When I left Iraq and came back stateside, I thought I’d left that future behind. Then I saw it come home in the chaos that was unleashed after Katrina hit New Orleans. And then I saw it again when Sandy battered New York and New Jersey: Government agencies failed to move quickly enough, and volunteer groups like Team Rubicon had to step in to manage disaster relief.

Now, when I look into our future — into the Anthropocene — I see water rising up to wash out lower Manhattan. I see food riots, hurricanes, and climate refugees. I see 82nd Airborne soldiers shooting looters. I see grid failure, wrecked harbors, Fukushima waste, and plagues. I see Baghdad. I see the Rockaways. I see a strange, precarious world.

Our new home.

The human psyche naturally rebels against the idea of its end. Likewise, civilizations have throughout history marched blindly toward disaster, because humans are wired to believe that tomorrow will be much like today — it is unnatural for us to think that this way of life, this present moment, this order of things is not stable and permanent. Across the world today, our actions testify to our belief that we can go on like this forever, burning oil, poisoning the seas, killing off other species, pumping carbon into the air, ignoring the ominous silence of our coal mine canaries in favor of the unending robotic tweets of our new digital imaginarium. Yet the reality of global climate change is going to keep intruding on our fantasies of perpetual growth, permanent innovation and endless energy, just as the reality of mortality shocks our casual faith in permanence.

The biggest problem climate change poses isn’t how the Department of Defense should plan for resource wars, or how we should put up sea walls to protect Alphabet City, or when we should evacuate Hoboken. It won’t be addressed by buying a Prius, signing a treaty, or turning off the air-conditioning. The biggest problem we face is a philosophical one: understanding that this civilization is already dead. The sooner we confront this problem, and the sooner we realize there’s nothing we can do to save ourselves, the sooner we can get down to the hard work of adapting, with mortal humility, to our new reality.

The choice is a clear one. We can continue acting as if tomorrow will be just like yesterday, growing less and less prepared for each new disaster as it comes, and more and more desperately invested in a life we can’t sustain. Or we can learn to see each day as the death of what came before, freeing ourselves to deal with whatever problems the present offers without attachment or fear.

#### Their reliance on the law reproduces speciesism

**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 the hierarchy between the human and nonhuman leads to billions of deaths per year and categorically outweighs. Unabated anthropocentrism is the only thing which can guarantee planetary extinction

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 an imagining of the global suicide of humanity – we must abandon our stranglehold over the domination of life in order to envision a more ethical future

Kochi and Ordan 8 – Lecturer in Law and International Security at the U of Sussex, and \*Research in Translation Studies at Bar Ilan U, (Tarik and Noam, “An argument for the global suicide of humanity” borderlands”, http://findarticles.com/p/articles/mi\_6981/is\_3\_7/ai\_n31524968/

How might such a standpoint of dialectical, utopian anti-humanism reconfigure a notion of action which does not simply repeat in another way the modern humanist infliction of violence, as exemplified by the plan of Hawking, or fall prey to institutional and systemic complicity in speciesist violence? While this question goes beyond what it is possible to outline in this paper, **we contend that** **the thought experiment of global suicide helps to locate this question--the question of modern action itself--as residing at the heart of the** modern environmental **problem**. In a sense perhaps the only way to understand what is at stake in ethical action which responds to the natural environment is to come to terms with the logical consequences of ethical action itself. **The point operates then not as the end, but as the starting point of a standpoint which attempts to reconfigure our notions of action, life-value, and harm**.

For some, guided by the pressure of moral conscience or by a practice of harm minimisation, the appropriate response to historical and contemporary environmental destruction is that of action guided by abstention. For example, one way of reacting to mundane, everyday complicity is the attempt to abstain or opt-out of certain aspects of modern, industrial society: to not eat non-human animals, to invest ethically, to buy organic produce, to not use cars and buses, to live in an environmentally conscious commune. Ranging from small personal decisions to the establishment of parallel economies (think of organic and fair trade products as an attempt to set up a quasi-parallel economy), a typical modern form of action is that of a refusal to be complicit in human practices that are violent and destructive. Again, however, at a practical level, to what extent are such acts of nonparticipation rendered banal by their complicity in other actions? In a grand register of violence and harm the individual who abstains from eating non-human animals but still uses the bus or an airplane or electricity has only opted out of some harm causing practices and remains fully complicit with others. **One response, however, which bypasses** the problem of **complicity** and the banality **of action is to take the non-participation solution to its** most **extreme** level. In this instance, the only way to truly be non-complicit in the violence of the human heritage would be to opt-out altogether. Here, then, the modern discourse of reflection, responsibility and action runs to its logical conclusion--the **global suicide of humanity**--as a free-willed and 'final solution'.

While we are not interested in the discussion of the 'method' of the global suicide of humanity per se, one method that would be the least violent is that of humans choosing to no longer reproduce. [10] The case at point here is that the global suicide of humanity would be a moral act; it would take humanity out of the equation of life on this earth and remake the calculation for the benefit of everything nonhuman. While suicide in certain forms of religious thinking is normally condemned as something which is selfish and inflicts harm upon loved ones, the global suicide of humanity would be the highest act of altruism. That is, global suicide would involve the taking of responsibility for the destructive actions of the human species. By eradicating ourselves we end the long process of inflicting harm upon other species and offer a human-free world. If there is a form of divine intelligence then surely the human act of global suicide will be seen for what it is: a profound moral gesture aimed at redeeming humanity. Such an act is an offer of sacrifice to pay for past wrongs that would usher in a new future. Through the death of our species we will give the gift of life to others.

It should be noted nonetheless that our proposal for the global suicide of humanity is based upon the notion that such a radical action needs to be voluntary and not forced. In this sense, and given the likelihood of such an action not being agreed upon, it operates as a thought experiment which may help humans to radically rethink what it means to participate in modern, moral life within the natural world. In other words, whether or not the act of global suicide takes place might well be irrelevant. What is more important is the form of critical reflection that an individual needs to go through before coming to the conclusion that the global suicide of humanity is an action that would be worthwhile. The point then of a thought experiment that considers the argument for the global suicide of humanity is the attempt to outline an anti-humanist, or non-human-centric ethics. Such an ethics attempts to take into account both sides of the human heritage: the capacity to carry out violence and inflict harm and the capacity to use moral reflection and creative social organisation to minimise violence and harm. Through the idea of global suicide such an ethics reintroduces a central question to the heart of moral reflection: To what extent is the value of the continuation of human life worth the total harm inflicted upon the life of all others? Regardless of whether an individual finds the idea of global suicide abhorrent or ridiculous, this question remains valid and relevant and will not go away, no matter how hard we try to forget, suppress or repress it.

### adv 1

#### 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.

#### Emergencies prove circumvention

**Fatovic 9**—Director of Graduate Studies for Political Science at Florida International University [added the word “is” for correct sentence structure—denoted by brackets]

(Clement, *Outside the Law: Emergency and Executive Power* pg 1-5, dml)

But the problem for any legal order is that law aims at fixity in a world beset by flux. The greatest challenge to legally established order comes not from the resistance of particular groups or individuals who object to any of its substantive aims but from the unruliness of the world itself. The stability, predictability, and regularity sought by law eventually runs up against **the unavoidable instability, unpredictability, and irregularity of the world**. Events constantly threaten to disrupt and destabilize the artificial order established by law. Emergencies-sudden and extreme occurrences such as the devastating terrorist attacks of September 11, an overwhelming natural disaster like Hurricane Katrina, a pandemic outbreak of avian flu, a catastrophic economic collapse, or a severe food shortage, to name just a few-dramatize **the limitations of the law** in dealing with unexpected and incalculable contingencies. Designed for the ordinary and the normal, law cannot always provide for such extraordinary occurrences in spite of its aspiration to comprehensiveness. When such events arise, the responsibility for formulating a response usually falls to the executive.

The executive has a unique relationship to the law and the order that it seeks, especially in a liberal constitutional system committed to the rule of law. Not only is the executive the authority most directly responsible for enforcing the law and maintaining order in ordinary circumstances, it is also the authority most immediately responsible for restoring order in extraordinary circumstances. But while the executive is expected to uphold and follow the law in normal times, **emergencies** sometimes **compel the executive to** exceed the strict letter of the law. Given the unique and irrepressible nature of emergencies, the law often provides **little effective guidance**, leaving executives to their own devices. Executives possess special resources and characteristics that enable them to **formulate responses more** rapidly**,** flexibly**, and** decisively **than can legislatures, courts, and bureaucracies**. Even where the law seeks to anticipate **and** provide **for emergencies by** specifying the kinds of actions **that** public **officials are permitted or required to take**, **emergencies create** unique opportunities **for the executive to** exercise an extraordinary degree of discretion. And when the law seems to be inadequate to the situation at hand, executives often claim that it [is] necessary to **go beyond its dictates** by consolidating those powers ordinarily exercised by other branches of government or **even by expanding the range of powers ordinarily permitted**. But in seeking to bring order to the chaos that emergencies instigate, executives who take such action also **bring attention to** the deficiencies of the law **in maintaining order**, often with serious consequences for the rule of law.

The kind of extralegal action that executives are frequently called upon to take in response to emergencies **is** deeply problematic **for liberal constitutionalism**, which gives pride of place to the rule of law, both in its self-definition and in its standard mode of operation. If emergencies test the limits of those general and prospective rules that are designed to make governmental action limited and predictable, that is because **emergencies are** largely unpredictable **and** potentially limitless.1 Yet the rule of law, which has enjoyed a distinguished position in constitutional thought going back to Aristotle, has always sought to place limits on what government may do by substituting the arbitrariness and unpredictability of extemporary decrees with the impartiality and regularity of impersonal rules promulgated in advance. The protection of individual freedom within liberal constitutionalism has come to be unimaginable where government does not operate according to general and determinate rules.2 The rule of law has achieved primacy within liberal constitutionalism because it is considered vital to the protection of individual freedom. As Max Weber famously explained of the modern bureaucratic state, legitimacy in the liberal state is not based on habitual obedience to traditions or customs sanctified by time or on personal devotion to a charismatic individual endowed with superhuman gifts but on belief in the legality of a state that is functionally competent in administering highly impersonal but "rational rules." 3 In fact, its entire history and aim can be summed up as an attempt to curtail the kind of discretionary action associated with the arbitrary "rule of men"-by making government itself subject to the law.

The apparent primacy of law in liberal constitutionalism has led some critics to **question its capacity to deal with emergencies**. Foremost among these critics is German political and constitutional theorist Carl Schmitt, who concluded that liberalism is incapable of dealing with the "exception" or "a case of extreme peril" that poses "a danger to the existence of the state" without resorting to measures that contradict and undermine its commitments to the rule of law, the separation of powers, the preservation of civil liberties, and other core values.4 In Schmitt's view, liberalism is wedded to a "normativistic" approach that seeks to regulate life according to strictly codified legal and moral rules that not only **obscure the "decisionistic" basis of all law** but also **deny the role of** personal decision-making **in the** interpretation**,** enforcement**, and** application **of law**. 5 Because legitimacy in a liberal constitutional order is based largely on adherence to formal legal procedures that restrict the kinds of actions governments are permitted to take, actions that have not been specified or authorized in advance **are simply ruled out**. According to Schmitt, the liberal demand that governmental action always be controllable **is** **based on the naive belief that the world is thoroughly calculable**. 6 If it expects regularity and predictability in government, it is because it understands the world in those terms, **making it** oblivious **to the problems of contingency**. Not only does this belief that the world is subject to a rational and predictable order make it difficult for liberalism to justify actions that stand outside that order, it also **makes it difficult for liberalism** even to acknowledge emergencies when they do arise. But Schmitt's critique goes even further than this. When liberal constitutionalism does acknowledge the exception, its commitment to the rule of law forces it to choose between potential suicide if it adheres strictly to its legalistic ideals and undeniable hypocrisy if ignores those ideals? Either way, the argument goes, **emergencies expose the inherent shortcomings and weaknesses of liberalism**.

It is undeniable that the rule of law occupies a privileged position within liberal constitutionalism, but it is a mistake to identify liberal constitutionalism with an excessively legalistic orientation that renders it incapable of dealing effectively with emergencies. Schmitt is correct in pointing out that liberal normativism seeks to render government action as impersonal and predictable as possible in normal circumstances, but the history of liberal 'I· constitutional thought leading up to the American Founding reveals that its main proponents recognized the need to supplement the rule of law with a personal element in cases of emergency. The political writings of John Locke, David Hume, William Blackstone, and those Founders who advocated a strong presidency indicate that many early liberal constitutionalists were **highly attuned** to the limitations of law in dealing with events that disrupt the regular order. They were well aware that rigid adherence to the formalities of law, both in responding to emergencies and in constraining the official who formulates the response, **could undermine important substantive aims and values**, thereby sacrificing the ends for the means.

Their reflections on the chronic instability and irregularity of politics reveal an appreciation for the **inescapable**-albeit temporary-**need** for the sort of discretionary action that the law ordinarily seeks to circumscribe. As Locke explained in his classic formulation, that "it is impossible to foresee, and so by laws to provide for, all Accidents and Necessities, that may concern the publick means that the formal powers of the executive specified in law must be supplemented with "prerogative," the "Power to act according to discretion, for the publick good, without the prescription of the Law, and sometimes even against it." 8 Unlike the powers of the Hobbesian sovereign, which are effectively absolute and unlimited, the exercise of prerogative is, in principle, limited in scope and duration to cases of emergency. The power to act outside and even against the law **does not mean that the executive is "above the law”**—morally or politically unaccountable—**but it does mean that** executive power isultimately irreducible to law**.**

## 2NC

### advantage

#### obama will sideline court

Worthington 10 (Andy, Investigative journalist and Guantanamo expert, “With Indefinite Detention and Transfer Bans, Obama and the Senate Plumb New Depths on Guantánamo,” 12-28, <http://www.andyworthington.co.uk/2010/12/28/with-indefinite-detention-and-transfer-bans-obama-and-the-senate-plumb-new-depths-on-guantanamo/>)

Lawmakers have, presumably, taken Lt. Col. Frakt’s criticism on board, but unfortunately, when it comes to freeing prisoners whose release was ordered by judges after they won their habeas petitions, a further problem is the Obama administration itself.

Although judges in the District Court in Washington D.C. have ruled on 57 habeas corpus petitions since the Supreme Court confirmed, in June 2008, that the prisoners had constitutionally guaranteed habeas rights, and have found in the prisoners’ favor in 38 of those cases, the administration has pushed back, appealing several successful petitions, and endorsing a broader definition of the standard required for ongoing detention, which has found support in the far more conservative D.C. Circuit Court.

This, combined with the evident unwillingness of either President Obama or Attorney General Eric Holder to provide any guidance to the Justice Department lawyers working on the Guantánamo cases — by, for example, conducting any kind of review of cases that should not be challenged in court — is worrying enough, but what is also apparent is that the Obama administration has, from the beginning, regarded the objectivity of the District Court judges as *less important* than the decisions made by the Guantánamo Review Task Force, which operated in secret, and, essentially, sidelined the courts.

#### 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.

#### Legal justification – Courts use immigration as a fallback to normalize detention authority

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)

This Article makes two arguments. First, immigration law—that is, plenary powers and statutory law—provides a fallback justification for Guantánamo detentions. Even though the Kiyemba decisions are viewed as habeas cases, immigration law plays a central role in making detention legal. Second, a complex political quagmire in the United States and in foreign affairs explains why political, as opposed to judicial, solutions cannot free these men. The executive branch has not used its parole power to release these men into the United States, thus avoiding indefinite detention and separation of powers concerns. A transnational analysis of the relevant political considerations highlights the influence of law’s assumptions regarding alienage, culture, geopolitics, and the War on Terror.

Immigration law is playing a central role in justifying detentions on Guantánamo, nine years after detentions began and after detainees have secured three victories in the Supreme Court.1 In the Kiyemba v. Obama cases, immigration law doctrine provided the legal basis for keeping five noncombatant men in indefinite detention, even after a district court approved their writ of habeas in 2008. In these cases, immigration law appeared as a norm barring judicial review for political questions and a rights limitation based on alien status or their location outside domestic borders. These are hallmark norms of immigration law’s plenary power doctrine. Court opinions refer to immigration law in the form of the plenary power doctrine and statutory law. The Kiyemba cases concerned Uighurs who are still unable to secure release from Guantánamo after nine years of detention, though they have writs of habeas corpus and the executive has not classified them as unlawful enemy combatants since 2008.2 Consequently, in all three Kiyemba v. Obama cases, the Court of Appeals for the District of Columbia Circuit has rejected judicial remedies for these detainees. These remedies could secure their release or enjoin their resettlement in China. The Supreme Court has repeatedly denied certiorari review of Kiyemba appellate decisions, most recently in April of 2011. The five Uighur detainees remain unable to secure their release from Guantánamo—the appellate decisions bar their habeas release and use immigration law to justify detention. These detentions are particularly significant given Boumediene v. Bush, in which the Supreme Court found that detainees have the right of constitutional habeas corpus, even as aliens held in an extraterritorial location.

### fw

#### This is the critical internal link into education—restraints are meaningless absent a focus on what debate can train us as students to do

**Esteemed Professor Kelly Michael Young in the Year of Our Lord 2013**—didn’t expect this card to be read this way

(Kelly, Associate Professor of Communication and Director of Forensics, Wayne State University, “Why Should We Debate About Restriction of Presidential War Powers”, <http://public.cedadebate.org/node/13>, dml)

 Lastly, debating presidential war powers is important because we the people **have an important role in affecting the use of presidential war powers**. As many legal scholars contend, regardless of the status of legal structures to check the presidency, an important political restrain on presidential war powers **is the presence of a** well-informed **and** educated **public**. As Justice Potter Stewart explains, “the only effective restraint upon executive policy and power…**may lie in** an enlightened citizenry – in **an** informed **and** critical **public opinion** which alone can protect the values of a democratic government” (http://www.law.cornell.edu/supct/html/historics/USSC\_CR\_0403\_0713\_ZC3.html). As a result, this is not simply an academic debate about institutions and powers that that do not affect us. As the numerous recent foreign policy scandals make clear, anyone who uses a cell-phone or the internet is potential affected by unchecked presidential war powers. Even if we agree that these powers are justified, it is important that today’s college students understand and appreciate the scope and consequences of presidential war powers, as **these students’ opinions will stand as an** important potential check **on the presidency**.

#### Their framework is depoliticizing and teaches the wrong solutions—beginning with individual action is comparatively more productive

Pitkin 98 (hanna, Prof of polis ci @ Berkeley, *The Attack of the Blob*, pp 274-284, thanks zane)

That brings us to the second half of Arendt's account of how our thinking furthers the social: the void in what we think about. Besides being thoughtless, we lack the very ideas of action, of politics, of freedom. We use those words, but only as empty cliches, in hortatory and manipulative ways or cynical and reductionist ones. These ideas are not serious for us, not actionable. So our thinking promotes the social also because we cannot even imagine a real alternative. Action and freedom are our lost treasure: forgotten, inadequately articulated, never theorized systematically, desperately difficult to convey to people who lack the relevant experiences.

To restore access to these ideas, Arendt employed several methodological devices, which also illuminate the sort of thinking that encourages free citizenship. The first of these devices is what she called "pearl diving," dredging up from the depths of the past the lost meaning of some crucial term. As the term, which had become a cliche, is restored to lively, actionable meaning, it is like a precious gem, refracting light on contemporary realities we had missed. Arendt quoted Shakespeare's Tempest: "Full fathom five thy father lies. . . .w78 She was trying, she said, "to discover the real origins of traditional concepts in order to distill from them anew their original spirit which has so sadly evaporated from the very key words of political language—such as freedom and justice, authority and reason, responsibility and virtue, power and glory—leaving behind empty shells."7\*

Most words, however, do not have an identifiable "real origin" nor any "original meaning" that scholarship can recover. Linguists simply trace a word's ancestry back from one language to another until the evidence runs out. Furthermore, Arendt never made clear why the earlier meanings of words should be authoritative for us, and indeed for some words, such as "society" and "revolution," she preferred the modern to the earlier meaning.

Arendt's "pearl diving" thus remains ambiguous. It can be understood in two distinct ways, with radically different implications for thinking and the social: as authoritative scholarly research or as a mode of empowerment accessible to everyone. On the first reading, Arendt is one more expert, a scholar of ancient languages who teaches the rest of us what a word "originally" meant and therefore still ought to mean, issuing an authoritative definition to which we are expected to submit. As chapter 8 suggested, Arendt is particularly drawn to this mode of presenting her work when she doubts her own authority and wants to fend off any possible objections in advance. Paradoxically, this way of explicating the lost treasure actually teaches unthinking deference, and thus is likely to promote the social.

On the second reading, however, what is to be retrieved is not a word's original meaning but, as in the passage quoted above, its "original spirit," which I take to mean the spirit of origins, the creative capacity of speakers, employed in a word's "origin" but also in every subsequent extension of its meaning. A word, as Arendt wrote late in her life, "is something like a frozen thought that thinking must unfreeze."\*0 Young-Bruehl reports that Arendt also sometimes called her enterprise "conceptual analysis," a phrase suggesting that it involves not a historical but a contemporary investigation, within the capabilities of any thoughtful person.81 Etymological information can sometimes help, as can a knowledge of history that reveals the real political struggles, with real winners and losers, which shaped the meanings of words that we inherit. But ulti-....CONTINUES

The depressing sense of hopelessness that results from examining the array of conditions in our lives conducive to the social and inhibiting free citizenship is partly an artifact of the way we have been examining those conditions. There is something else to be said, something so far omitted from consideration, not exactly an additional fact or condition but another perspective on what we have seen: a fourth and final path into the thicket of the social. It would be ironic indeed if a study criticizing Arendt for having mystified the social were to end with only the three unmystified approaches we have examined, for each and all of them srill miss what is most valuable in her theorizing. Stopping with these three paths would amount to throwing out Arendt's achievement along with her unfortu nate Blob. So we must add one more approach, akin to the outlook of existentialism, which we shall call the path of "Just do it!"

We have been discussing the lost ideas of action, politics, and freedom, but discussing them in the same manner as we discussed institutional arrangements and character structure: as possible explanations for the social, suggesting possible remedial policies. These are certainly relevant to politics, but they still lack the existential impetus that might carry us across the conceptual gap between the spectator's outlook and that of the engaged citizen. A political approach must include not just thinking *about* *action* but thinking *as an actor*: not as a hypothetical world dictator magically imposing an ideal policy but as one free citizen among others, whose joint commitment and effort will be required for accomplishing the right sort of changes.

The fourth approach to the problem of the social, then, is not one more rival explanation or policy prescription but more like an essential supplement to any and all of the other approaches, more about how they are to be employed than an alternative to them. If one puts the perspective of the agent at the center, then the only "explanation" of the social one needs or can have is that we aren't (yet) doing anything to diminish it. And the only "policy" that can help bring about free politics is to start enacting it. As an explanation of how we are getting in our own way and as a prescription for what we should do, this obviously is not much help. As a way of persuading people to act and use their capacities, it is just about useless. Yet as a supplement to explanations and policy suggestions it is essential, if our goal is free politics or diminishing the social. For this fourth approach reminds us that whatever we may learn along the other paths will have to be enacted by and among people, not imposed on inanimate material or cattle, because this particular goal can only be achieved by enlisting people's action, inducing their own free citizenship. Action, as Arendt insists, has no causes. That is a logical or conceptual point: to look on human conduct from the perspective of agency is to see (some of) that conduct as originating in the agent "whose" action it is, so that he deserves the credit or the blame, unlike a storm, a chemical process, or the movements of a puppet. That is why she says that, from the perspective of explanation and policy prescription, action always "looks like a miracle."" The agent is hy definition an unmoved mover, the inexplicable origin ot something uncaused, even though we know that from a different perspective action does not exist and that every apparent action also has a causal history and an intended goal. If politics is concerted action, then, the kind of "taking charge" it involves will be very different from homo faber\ efficient technical mastery of materials. The basic political question remains "What shall we do?" and both the "do" and the "we" are always problematic, contestable, continually being (reconstituted.

Approaching the social by the fourth path reminds us that the various conditions discovered along the other paths arc, singly and in combination, neither necessary nor sufficient to displace the social or assure free politics, though they can indeed facilitate or hinder, invite or discour-age, aid or inhibit. They are not necessary because the social is a matter of degree, not a metaphysical transformation, and the human capacities for action and judgment cannot be lost. We learn that truth from ihe Resistance; we learn it from popular rebellions and revolutions; we learn it from social movements; we learn it from the story of Anton Schmidt: action can never be ruled out. Whether one inquires conceptually—about the meaning of agency—or historically—about past times and places where previously apolitical people in large numbers have begun to engage actively in a concerted effort to direct their shared fate—the result is the same: there can be no absolute prerequisite to freedom. We are always already free-to-become-free. Or at least, since there is no guarantee of success, we are always already free-to-begin-moving-toward-freedom, free-to-enlarge-the-degree-of-our-freedom, both individually and collectively. A public arena already institutionalized may facilitate action, but concerted action can also create arenas. Courage and responsibility may be conducive to action, but often we only discover our real capacities in action. Awareness of what action and freedom really are may help, but one of the best ways to gain such awareness is through experiencing them.

Similarly, no set of facilitating conditions is sufficient to produce action or assure free citizenship. No conceptualization or theorizing can guarantee their remembrance; no institutions can assure their continuation; no type of character suffices to make people free agents, because freedom is not something that can be caused, given, or imposed. It has to be taken, chosen, exercised, enacted, if it is to exist at all. Nothing can guarantee its coming into existence except doing it; nothing can make it endure except continuing to do it.

These matters are too often discussed today in terms of "resistance" and "identity," located in "civil society," and contrasted to government and politics." Though Arendt began from Jewish identity and resistance to the Nazis, it seems to me that she was right to move beyond them toward a more general theory of active citizenship and to identify such citizenship with politics. Resistance to unjust power is surely important, and there may be need for it in any collectivity. But it retains a conceptual division between "they," who have power and are guilty, and ourselves, who resist their initiatives but are not in charge. The problem of the social, however, is that people are power without having it, that even the "powerful," whose decisions affect hundreds of thousands, are unable to alter the ineni.il drift as long as everyone keeps doing as we now do.

One may have to begin with resistance, but it is not the goal, is not enough. Seeking to force "them" to change "their" government and pol-icy does not yet recognize that government and policy as (potentially and properly) ours, everyone's concern. And though, under conditions of the social, the beginnings of free action are very likely to take place outside of the formal institutions of government, thus in "civil society," they surely are political if they aim at redirecting, taking some charge of the collectivity. When, as Tocqueville said of France in the 1830s, the officially political institutions of government are devoid of "political life itself," so that in them all is "languor, impotence, stagnation, and boredom," then it may happen that elsewhere, among those excluded or withdrawn, "political life beg[ins] to make itself manifest."99 Such unofficial political life is not merely resistance—negative or defensive—but instead, as Char said about the French Resistance, "a public realm" where free citizens address the real "affairs of the country."100 Thus Arendt was right to insist, with Tocqueville, that what we need is politicization, the arousal of now subjected, withdrawn, or irresponsible people to their own real capacities, needs, and responsibilities. Politicization here implies neither increased managerial intrusion into people's personal lives nor dutiful submission to official authorities, but, on the contrary, responsible and effective participation in self-government that addresses people's real troubles and needs.

Reviewing the conditions of our world along any of the first three paths into the thicket of the social, we noted, can be discouraging, suggesting that we have become entrapped in a vicious cycle. The conditions we would need for escaping it are precisely what we lack: institutions reflect character, character reflects ideas, ideas emerge out of praxis, everything depends on everything else, and here we are, deep in the social. The fourth path into the thicket reminds us that, precisely because everything depends on everything else and because freedom has no absolute preconditions, any step in the right direction—be it institutional, charac-terological, or ideational—can have further, widening effects, enlarging the space for freedom. Where one steps forward, others may follow. Where one speaks the truth, others may recognize it and take heart to do the same. The only place to begin is where we are, and there are a hundred ways of beginning, as Arendt says, "almost any time and anywhere," because action "is the one activity which constitutes" our public, shared world.101 Once we do begin, moreover, we may find others already under way, may discover all sorts of organizations and movements—be they about ecology, feminism, disarmament, torture, human rights, or nuclear power—movements locally generated but aimed at public responsibility and power.

Too hortatory and idealistic? Out of keeping with this book's stress on dialectical balance and on the seriousness of the problem of the social? Yes, of course. But that is because we have been pursuing the fourth path in isolation, when it is actually an essential supplement to the others. Blind activism is no help—no more than impotent thought. Political action requires realism, responsibility, thoughtfulness about conditions and trends, possibilities and policies, ends and means, and only then does it also require something more. Though Arendt calls action a miracle, if you wait for your own action to befall you, it will not; you have to just do it. Others may or may not join you. Your action and the others may or may not succeed in extending freedom rather than furthering the social. There are no guarantees. But who will do it if we do not? Reversing our present drift into the social is everyone's task, and one we must do together. That follows from recognizing that the social is not a Blob. The task is not slaying an alien monster but reconstituting ourselves: reorganizing institutions, reforming character, contesting ideas. That may not be easy, but it can never become impossible. We arc depressingly the problem; we are encouragingly the solution.

### k

#### Bureaucracy explains bad risk analysis and threat inflation better

**Glennon 14**—Professor of International Law, Fletcher School of Law and Diplomacy, Tufts University [Trumanites=“the network of several hundred high-level military, intelligence, diplomatic, and law enforcement officials within the Executive Branch who are responsible for national security policymaking”]

(Michael, “National Security and Double Government”, Harvard National Security Journal / Vol. 5, pg 1-114, dml)

The Trumanites’ propensity to define security in military and intelligence terms rather than political and diplomatic ones **reinforces a powerful structural dynamic**. That dynamic can be succinctly stated: Overprotection of national security creates **costs that the Trumanite network can** externalize; under-protection creates costs that the network must internalize. The resulting incentive structure **encourages** the exaggeration of existing threats **and** the creation of imaginary ones. The security programs that emerge are, in economic terms, “sticky down”—easier to grow than to shrink.

The Trumanites sacrifice little when disproportionate money or ~~man~~power is devoted to security. The operatives that they direct do not incur trade-off costs.152 The Trumanites do, however, reap the benefits of that disproportionality—a larger payroll, more personnel, broader authority, and an even lower risk that they will be blamed in the event of a successful attack.153 Yet Madisonian institutions incur the costs of excessive resources that flow to the Trumanites. The President must submit a budget that includes the needed taxes. Members of Congress must vote for those taxes. A federal agency must collect the taxes. When it comes to picking up the tab, Trumanites are nowhere to be seen.

If national security protection is inadequate, on the other hand, **the Trumanites are held accountable**. They are the experts on whom the Madisonian institutions rely to keep the nation safe. They are the recipients of Madisonian largesse, doled out to ensure that no blame will be cast by voters seeking retribution for a job poorly done. In the event of a catastrophic attack, the buck stops with the Trumanites. **No Trumanite craves to be the target of a 9/11 commission following a catastrophic failure**. **Thus they have**, as Jeffrey Rosen put it, **an “incentive** to exaggerate risks **and pander to public fears”**154—“an incentive **to pass along** vague **and** unconfirmed **threats of future violence**, in order to protect themselves from criticism”155 should another attack occur.

Indeed, a purely “rational” actor in the Trumanite network **might hardly be expected to do anything** other than inflate threats. In this way, the domestic political dynamic reinforces the security dilemma familiar to international relations students, the quandary that a nation confronts when, in taking steps to enhance its security, it unintentionally threatens the security of another nation and thus finds its own security threatened when the other nation takes compensatory action.156 **An** inexorable **and** destabilizing **arms race** is thereby fueled by **seemingly rational domestic actors responding to seemingly reasonable threats**—threats that they unwittingly helped create.

#### Eternal return?

**Frug 84**—Louis D. Brandeis Professor of Law at Harvard Law School [gendered language modified—the first instance of “Man” is struck through rather than substituted because it’s referring to a book title]

(Gerald, “THE IDEOLOGY OF BUREAUCRACY IN AMERICAN LAW”, 97 Harv. L. Rev 1276 1983-1984, dml)

These stances represent ways to define ourselves in terms of the formalist vision. But these forms of self-definition, like the model itself, are tolerable only as long as there is some space (at home, in the voting booth) where we can express our subjectivity - our sense of self - **without its being infected by the bureaucracies we have created**. The dangerous supplement analysis should help us see how **such a protection of the self is** unattainable. Because the experience of subjectivity **cannot be disentangled from the structures in which people live**, no realm of subjectivity can be protected **from the attempt to objectify bureaucratic life**. There are no "shareholders" or "citizens" in the world **who are not simultaneously** subordinates within bureaucratic structures. The attempt to objectify human life **within bureaucracies threatens to** affect people in their lives as a whole - **it shapes their way of dealing with the world** even in their "free" activities as citizens or shareholders. Thus, the inability to divide people into components means that bureaucratic objectivity invades **and** transforms **the subjective experience** of the very people who are supposed to control - and take responsibility for - bureaucratic objectivity. Everyone is in danger of becoming "One Dimensional ~~Man~~," 122 **a human being who has** lost the ability **to** sense the rich possibilities of human existence **by reducing life** to the terms of instrumental rationality. Because all human existence is affected by bureaucratic structures, the formalist model's attempt to rob some aspects of life of "personal" qualities threatens the life experience itself. Max Weber articulated this fear by imagining the cloak of rationality becoming in the end [hu]man's iron cage:

#### Their aff scape goats the decision on indefinite detention to legal bureaucrats who will make racist decisions about who will be indefinitely detained RATHER than applying the plan’s case law equally

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

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, normal 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 stands 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 Convention and other standards of legal treatment to the prisoners captured 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.

#### Tag rly can’t do this card justice

**Dillon 13**—PhD in American Studies at Minnesota, now an Assistant Professor of Queer Studies at Hampshire College

(Stephen, “Fugitive Life: Race, Gender, and the Rise of the Neoliberal-Carceral State”, <http://conservancy.umn.edu/bitstream/153053/1/Dillon_umn_0130E_13833.pdf>, dml)

The arguments advanced by Butler and Agamben have not gone without criticism. Joshua Comaroff argues that “it is not the exceptional, the supra- or extralegal that defines Guantánamism, but rather its conditional existence within the law, the intentional contortions made possible by…spatial and temporal contradictions inherent in the judicial system.”449 Guantánamo is not outside the law; rather, it is made possible by the law and the law’s ability to contort its application through “spatialtemporal disarticulations” that open up new possibilities of legal action.450 For Comaroff, it is not Guantánamo that is a “non-place,” it is Agamben’s theory that is ahistorical and ageographical in its effacement of Guantánamo’s colonial history and location.451 Nassir Hussain similarly argues that at Guantánamo one does not find not an emptying out of law but an “abundant use of technical distinctions, differing regulations, and multiple invocations of authority.” 452 If Guantánamo is understood as a space outside the law, then the presumed solution is the application of more laws and regulations. Yet, Guantánamo is not a space of suspensions, outsideness, and exclusions—it is a space of hyperlegality. It operates on a continuum where the norm and exception have become indistinguishable and “points to a desire for and an attempt at a zone that operates not as an exception but as a parallel in a modern administrative legality.”453 And as Hussain and others observe, among the detainees held in Guantánamo, there are people who have been declared non–enemy combatants, but due to their stateless status continue to be imprisoned in Guantánamo, as they would in any immigration jail in the United States.454 Thus, the space of domestic detention and incarceration provides a genealogy of the forms of terror and violence that operate as the norm at Guantánamo and elsewhere. The control unit is one such space.

Unprecedented as the legal machinations employed at Guantánamo may seem, as Colin Dayan documents, they rely on the last thirty years of Supreme Court decisions that have abolished the Eighth Amendment’s prohibition of “cruel and unusual punishment.”455 Further, as Dayan and Caleb Smith argue, the social, civic, and biological death produced in the “new war prison” is also central to the institutionality of the domestic prison. From its inception as an institution of humanity, civilization, and reform, its designers understood the prison as a place of “deliberate mortification.”456 Early prison reformers in the 18th and 19th centuries specifically designed the prison as a place where human beings would be rendered civically and socially dead—both dead to the law in that they were divested of any rights and dead to the social world in that they were severed from its affective ties. Stripped of citizenship and subjectivity, the prisoner became a specter, an “animate corpse” in the eyes of the law.457 In the words of 18th century reformers, the prison was a “living tomb,” a “space of terror” and “ghostly halflife.”458 Before the 1970s, the goal of incarceration was to rehabilitate the captive. But to be reborn, one first had to be spiritually and legally killed in the name of reanimation. The reformer Benjamin Rush described the convict as one who “was lost and is found— was dead and is alive.”459 Dehumanization is not an exception to the rehabilitative intentions of confinement; it is the sole purpose of the modern prison, making death central to the spatial and temporal politics of incarceration.

Death, physic disintegration, and the undoing of subjectivity are built into the discursive and material architecture of the prison. This is more than a metaphor; countless prisoners over the last three centuries recount how the prison produces claustrophobia, chronic rage, panic, depression, blindness, hallucinations, weight loss, dizziness, and heart palpitations. These states of psychic and physical duress made it so the walls of the prison whisper, scream, vibrate, and close in; cement, steel, and space become animated by the necropolitical institutionality of the prison. For example, from the late 1960s to the early 1970s, inmates in Soledad prison “composed inside and smuggled out” handwritten poems, essays, and letters in order to construct a book titled, Words From the House of the Dead. Many of the authors understood themselves as trying to breach a dividing line between the living and the living dead. One essay in particular, “How to Develop a Mentally Unhealthy Individual,” describes how the prison apprehends “subjects” engaging in non-normative behaviors (“loving a prostitute,” using drugs, or other “insidious behaviors”) because they are a threat to the social order.460 The prison abolishes “his identity and future” and then systematically produces psychic debility and incapacity in the form of mental illness. The prisoner, forgotten by the world they threatened, lives a “half-life” of mind-numbing repetition and “omnipresent” control, regulation, “punishment and degradation.”461

When George Jackson wrote in 1970 that “capture is the closest thing to being dead that one is likely to experience in this life,” he was not being hyperbolic. 462 He was articulating the historical fact that the modus operandi of the temporality of incarceration, and the prison itself, is to produce premature death. This process is not exceptional to the operation of the norm—it is how the norm comes into being. In the words of Smith, “prisoners do not occupy a zone of exile outside the circle of juridical and philosophical humanity: the prison that holds them is one of the primary sites through which the very idea of modern humanity is imagined and contested.”463 Like slavery and settler colonialism, the prison is a foundational site for the reproduction of liberalism’s freedom. The criminal, like the slave, was already dead, expelled outside the realm of legal and extra-legal concern, empathy, and embrace. The diseased body of the criminal had to be expunged from civil society and “once expelled became the visible record of the sacrifice on which civilization maintained itself.”464 It is crucial to note that this process did not occur outside the law, but was a manifestation of the killing power of the law itself. The convict was buried alive by the law, forced to live a death in life within the tomb of the prison. Smith describes this when he writes, “Perhaps more than any other institution, the prison manifests the power of the law to disfigure and kill those within it circle of rights.”465 The prisoner, though a living and breathing being, is dead—buried by the crushing weight of the law.466 In short, prisoners do not need to be protected by the law from lawlessness, because the law is what renders them dead.

The construction of the prison as a space of death and the prisoner as the living dead arose out of Enlightenment conceptions of humanity and natural rights that called for the abolition of gratuitous public executions in favor of the sterility and isolation—the humanness—of the prison. Humanity and rights are not the potential saviors of the prison’s dead, they are the technologies needed to turn the living into walking ghosts. Civil society’s future rested on the prisoner’s expulsion from humanity—this is the life of the prison and it is central to the answer of why and how Guantánamo can exist.

#### Cole definitely agrees with the neg more than the aff—his beef with Rana is that Rana puts too much emphasis on mere critique—the alt resolves this by enabling individual action—he also agrees with the link

**Cole 12**—Georgetown Law

(David, “Confronting the Wizard of Oz: National Security, Expertise, and Secrecy”, 44 Conn. L. Rev. 1617-1625 (2012), dml)

Second, even if we bracketed the oft-competing rights concerns, and all we cared about was effective security, deference to experts operating with secret information behind closed doors might well be counterproductive. Experts are in no way immune from groupthink and other decisional biases, and the smaller the circle of actors with the requisite knowledge to act, the less likely it is that such errors will be corrected.23 Moreover, as the 9/11 Commission found, barriers to the sharing of information can greatly undermine the soundness of security strategies.24 Stovepiping is an inevitable consequence of specialization and classification (because only those with a clearance and a “need to know” can then gain access to the information), and makes it less likely that even the experts themselves will have access to all the information relevant to their decisions.25 Thus, greater transparency may be a benefit not merely from the vantage point of democratic legitimacy, as Rana illustrates, but also from the normative perspective of striking an appropriate balance, and from the pragmatic standpoint of improving security.

Rana calls our attention to some of the deep philosophical undercurrents that have come to define modern attitudes toward national security. The issues are too important to be left to experts, but until we challenge our assumptions about the propriety of doing so, he argues, no formal legal solution will succeed. I am sympathetic to Rana’s concerns, and seek to support his argument with the three principal points made here. First, it is critical to consider the particular role that secrecy, itself controlled by experts, plays in constructing and perpetuating “expertise,” and in shielding the experts from democratic assessment. Second, when it comes to weighing security against other values, such as privacy, liberty, and human dignity, the experts deserve skepticism, not deference. And third, security decisions themselves are often undermined by the barriers that secrecy and specialization raise. Like the Wizard of Oz, national security experts operate behind a large screen, and that screen bars us from realizing, as Rana insists, that we are all capable of making the necessarily normative judgments about security and liberty that implicate not only the survival of our polity, but its survival in the form we choose.

## 1NR

### anthro

#### 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

Kochi and Ordan 8 – Lecturer in Law and International Security at the U of Sussex, and \*Research in Translation Studies at Bar Ilan U, (Tarik and Noam, “An argument for the global suicide of humanity” borderlands”, http://findarticles.com/p/articles/mi\_6981/is\_3\_7/ai\_n31524968/

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.