# Round 4—Neg vs Northwestern HS

## 1NC

### 1

#### Text: The United States Federal Government should grant Article III Courts exclusive jurisdiction over the United States’ indefinite imprisonment policy as described in the 2001 Authorization for Use of Military Force.

**Replace detainee with prisoner – this comes first**

**Sullivan, 4/12** editor of The New York Times (Margaret Sullivan, 12 April 2013, “‘Targeted Killing,’ ‘Detainee’ and ‘Torture’: Why Language Choice Matters,” http://publiceditor.blogs.nytimes.com/2013/04/12/targeted-killing-detainee-and-torture-why-language-choice-matters/?\_r=0)//CC

If it’s torture, why call it a “harsh interrogation technique”? If it’s premeditated assassination, why call it a “targeted killing”? And if a suspected terrorist has been locked up at Guantánamo Bay for more than a decade, why call him a “detainee”? Many of the complaints I get in the public editor’s in-box are about phrases that The Times uses. These writers complain that **language** choices make a **huge difference in perception**, **especially** when they accept and adopt government-speak. One reader, Donald Mintz, a professor emeritus at Montclair State University, objects to the unquestioning use of “defense” as in “defense budget,” and prefers “military.” He wrote: “Outside of direct or indirect quotation the term ‘defense’ should be used sparingly and with the greatest caution. Who, after all, could be against ‘defense’? But at least some of us are against excessive militarism.” Another reader, Roscoe Gort, commented on an article this week, “Targeted Killing Comes to Define War on Terror.” “Since 9/11 The New York Times has shown a great willingness to adopt the Newspeak (‘War Is Peace’) terminology from successive administrations in Washington,” he wrote. “War on terror” was just one example, he said, and wanted to know how The Times decides what terms to use. And, he wondered, “Do reporters like Scott Shane really write this way, or does some editor automatically change all the occurrences of “murder” or “assassination” in the stories they file into “targeted killing”? And Gene Krzyzynski, a veteran copy editor at The Buffalo News and a longtime New York Times reader, objected to the continued use of the term “detainee” to describe suspected terrorists who are being held indefinitely at the United States naval base at Guantánamo Bay, calling it “**accepting political spin** at face value.” Mr. Krzyzynski wrote: **To “detain” connotes brevity**, as in, say, a traveler detained at a border or an airport for further Immigration, Customs, T.S.A. or similar questioning-searching-processing. I’d go as far as to call it **language abuse** in the context of Gitmo, especially for anyone who has a healthy respect for plain, clear English or who remembers “detention” in high school. “**Prisoner**” and its variants **would be accurate**, of course, given the unusually long time behind bars or in cages (historically unprecedented, actually, for any P.O.W.’s, if one accepts that we’re in a “war,” albeit undeclared by Congress). Seven years ago, the Pulitzer Prize-winning cartoonist Steve Breen of The San Diego Union-Tribune came up with what’s probably the most precise term of all: “infinitee.” I asked Mr. Shane, a national security reporter in the Washington bureau, and Philip B. Corbett, the associate managing editor for standards, to respond to some of these issues. Mr. Shane addressed Mr. Gort’s question on “targeted killings,” noting that editors and reporters have discussed it repeatedly. He wrote: “Assassination” is banned by executive order, but for decades that has been interpreted by successive administrations as prohibiting the killing of political figures, not suspected terrorists. Certainly most of those killed are not political figures, though arguably some might be. Were we to use “assassination” routinely about drone shots, it would suggest that the administration is deliberately violating the executive order, which is not the case. This administration, like others, just doesn’t think the executive order applies. (The same issue arose when Ronald Reagan bombed Libya, and Bill Clinton fired cruise missiles at Sudan and Afghanistan.) “Murder,” of course, is a specific crime described in United States law with a bunch of elements, including illegality, so it would certainly not be straight news reporting to say President Obama was “murdering” people. This leaves “targeted killing,” which I think is far from a euphemism. It denotes exactly what’s happening: American drone operators aim at people on the ground and fire missiles at them. I think it’s a pretty good term for what’s happening, if a bit clinical. Mr. Shane added that he had only one serious qualm about the term. That, he said, was expressed by an administration official: “It’s not the targeted killings I object to — it’s the untargeted killings.” The official “was talking about so-called ‘signature strikes’ that target suspected militants based on their appearance, location, weapons and so on, not their identities, which are unknown; and also about mistaken strikes that kill civilians.” On the matter of “detainee,” Mr. Corbett called it “a legitimate concern” and agreed that the term might not be ideal. He said that it, not prisoner, was used because those being held “are in such an unusual situation – they are not serving a prison term, they are in an unusual status of limbo.” The debate over the word “torture,” he said, has similar implications to the one Mr. Shane described with assassination. “The word torture, aside from its common sense meaning, has specific legal meaning and ramifications,” Mr. Corbett said. “Part of the debate is on that very point.” The Times wants to “**avoid making a legal judgment in the middle of a debate**,” he added. Mr. Corbett also said that readers might have the wrong idea about The Times’s practices on word use. “People have this image that we set out a list of terms that must be used and those that must not be used — that there is a committee or cabal that sends out an edict,” he said. That’s far from true, he said. “In a vast majority of cases, we rely on our reporters to use their judgment,” he said. “Only rarely do we make a firm style rule.” Although individual words and phrases may not amount to very much in the great flow produced each day, **language matters**. When news organizations accept the government’s way of speaking, they seem to **accept the government’s way of thinking**. In The Times, these decisions carry even more weight. Word choices like these **deserve thoughtful consideration** – and, at times, some institutional **soul-searching**.

#### This militarization of language results in global catastrophe

**Zournazi, 07** – professor at the University of Woolongong (Mary, *Keywords to War: Reviving Language in an Age of Terror*, pp. 1-4, Scribe Publications)**Red**

Keywords to War is a response to this profoundly disturbing environment. The book emerges at time when the cultural dimensions of English language use have altered key words and concepts, such as freedom, justice' and truth, that we hold dear in our democracies. Underpinning this corruption of language is what Bertolt Brecht famously called a 'moral conscience' of war that structures our day-to-day experience and activity. Taking this structure seriously, this book explores the inextricable link between language and a deteriorating moral conscience; taken together these elements infiltrate our perception of and how we function in the world. Now more than ever it is necessary to extricate ourselves from this quagmire, and from the confused and disputed meanings that permeate and have produced an often latent, but significantly charged, **mental state of war in our everyday lives**, so much so that Our interior worlds and social spaces are infused with the language of war. Historically speaking, this is not a recent phenomenon, but what we face today, with the expansion of technology and the unholy alliance between new forms of power, morality, and terror, is a more **intense violation of language.** Taking note of the power of words and their articulation within language is somewhat paradoxical though, because as English continues to grow and expand, **the precision and depth of our language use**, particularly in public and political debate, **appears to have contracted.** In other words, there is a collision between language and the political upstaging of fear, and terror that creates insecurity in individuals, and the **improper treatment and violence done to language, shrinks and restricts the language that could otherwise be invented in diplomacy and accountability in the global public sphere.** Inspired by the traditions of Raymond Williams' Keywords (1983), and Don Watson's Death Sentence (2003), in which he examines the death of language, this book is an urgent call to understand how much of our language has become surrounded by fear and suspicion, by the annihilation of meaning, and by the deadening of its use. As these circumstances appear as a natural states of affairs, the revival of language used to remedy this situation is a vital task that **cannot be ignored.** In this way, I have gathered together select keywords to war as tools to help us think past terror and to restore a revitalised language into our everyday lives and political environments. Keywords to War is a continuation, albeit in a different form, of my earlier work on a political vision of hope. In it, further questions and issues emerge around how to act ethically and take responsibility for our political actions, directions, and visions, in ways that correspond to our personal and individual choices and attitudes. It is clear to me that unless there is a radical shift in how we approach attitudes to war, violence, revenge, and terror through our language and conceptual frames, we risk destruction and **catastrophe far greater than ever imagined,** greater even than sci-fi fantasy and our multicoloured technological dreams than transform into nightmares. Given this, I explore how the real effects of pain and suffering are often destroyed in our use of language, and how morality is often equated with violence. In a different context, former US vice-president Al Gore has noted that issues affecting climate change are moral, not political. But 'moral' and 'political' cannot be so easily separated, as morality is at the very core of social and political activity. In short, our **moral responsibilities directly affect our political language and practice.** The spoils of this have been evident in how the terms 'good' and 'evil' have resurfaced in attitudes that Islam and the West hold towards each other, and on a world stage that has seen an escalation of terrorist politics since 9/11. Thus, it is important, indeed essential, to express how **language slices across the morality and values that structure our political terms of reference.** As such the moral question that Gore poses is pertinent here, as this book is about the remaking of the world through the **language** that **has gone awry on a global scale.** But we must be careful, as the language of climate change and responses to it, may also continue a language of war. It is precisely because morality changes and language does too that we have to take seriously the interplay between them. Yet we rarely do this, despite how essential it is to do so in order to imagine and **construct an alternative vision of our world.**

### 2

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

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

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

### 3

#### The legal system is broken as the sovereign’s ability to exploit fundamental flaws in the legal system guarantees global biopolitical war—the ballot should side with the global countermovement against such violence that questions the validity of the sovereign system of law itself

Gulli 13. Bruno Gulli, professor of history, philosophy, and political science at Kingsborough College in New York, “For the critique of sovereignty and violence,” <http://academia.edu/2527260/For_the_Critique_of_Sovereignty_and_Violence>, pg. 1

We live in an unprecedented time of crisis. The violence that characterized the twentieth century, and virtually all known human history before that, seems to have entered the twenty-first century with exceptional force and singularity. True, this century opened with the terrible events of September 11. However, September 11 is not the beginning of history. Nor are the histories of more forgotten places and people, the events that shape those histories, less terrible and violent – though they may often be less spectacular. The singularity of this violence, this paradigm of terror, does not even simply lie in its globality, for that is something that our century shares with the whole history of capitalism and empire, of which it is a part. Rather, it must be seen in the fact that terror as a global phenomenon has now become self-conscious. Today, the struggle is for global dominance in a singularly new way, and war –regardless of where it happens—is also always global. Moreover, in its self-awareness, terror has become, more than it has ever been, an instrument of racism. Indeed, what is new in the singularity of this violent struggle, this racist and terrifying war, is that in the usual attempt to neutralize the enemy, there is a cleansing of immense proportion going on. To use a word which has become popular since Michel Foucault, it is a biopolitical cleansing. This is not the traditional ethnic cleansing, where one ethnic group is targeted by a state power – though that is also part of the general paradigm of racism and violence. It is rather a global cleansing, where the sovereign elites, the global sovereigns in the political and financial arenas (capital and the political institutions), in all kinds of ways target those who do not belong with them on account of their race, class, gender, and so on, but above all, on account of their way of life and way of thinking. These are the multitudes of people who, for one reason or the other, are liable for scrutiny and surveillance, extortion (typically, in the form of over- taxation and fines) and arrest, brutality, torture, and violent death. The sovereigns target anyone who, as Giorgio Agamben (1998) shows with the figure of homo sacer, can be killed without being sacrificed – anyone who can be reduced to the paradoxical and ultimately impossible condition of bare life, whose only horizon is death itself. In this sense, the biopolitical cleansing is also immediately a thanatopolitical instrument.

The biopolitical struggle for dominance is a fight to the death. Those who wage the struggle to begin with, those who want to dominate, will not rest until they have prevailed. Their fanatical and self-serving drive is also very much the source of the crisis investing all others. The point of this essay is to show that the present crisis, which is systemic and permanent and thus something more than a mere crisis, cannot be solved unless the struggle for dominance is eliminated. The elimination of such struggle implies the demise of the global sovereigns, the global elites – and this will not happen without a global revolution, a “restructuring of the world” (Fanon 1967: 82). This must be a revolution against the paradigm of violence and terror typical of the global sovereigns. It is not a movement that uses violence and terror, but rather one that counters the primordial terror and violence of the sovereign elites by living up to the vision of a new world already worked out and cherished by multitudes of people. This is the nature of counter-violence: not to use violence in one’s own turn, but to deactivate and destroy its mechanism. At the beginning of the modern era, Niccolò Machiavelli saw the main distinction is society in terms of dominance, the will to dominate, or the lack thereof. Freedom, Machiavelli says, is obviously on the side of those who reject the paradigm of domination:

[A]nd doubtless, if we consider the objects of the nobles and of the people, we must see that the first have a great desire to dominate, whilst the latter have only the wish not to be dominated, and consequently a greater desire to live in the enjoyment of liberty (Discourses, I, V).

Who can resist applying this amazing insight to the many situations of resistance and revolt that have been happening in the world for the last two years? From Tahrir Square to Bahrain, from Syntagma Square and Plaza Mayor to the streets of New York and Oakland, ‘the people’ speak with one voice against ‘the nobles;’ the 99% all face the same enemy: the same 1%; courage and freedom face the same police and military machine of cowardice and deceit, brutality and repression. Those who do not want to be dominated, and do not need to be governed, are ontologically on the terrain of freedom, always-already turned toward a poetic desire for the common good, the ethics of a just world. The point here is not to distinguish between good and evil, but rather to understand the twofold nature of power – as domination or as care.

The biopolitical (and thanatopolitical) struggle for dominance is unilateral, for there is only one side that wants to dominate. The other side –ontologically, if not circumstantially, free and certainly wiser—does not want to dominate; rather, it wants not to be dominated. This means that it rejects domination as such. The rejection of domination also implies the rejection of violence, and I have already spoken above of the meaning of counter-violence in this sense. To put it another way, with Melville’s (2012) Bartleby, this other side “would prefer not to” be dominated, and it “would prefer not to” be forced into the paradigm of violence. Yet, for this preference, this desire, to pass from potentiality into actuality, action must be taken – an action which is a return and a going under, an uprising and a hurricane. Revolution is to turn oneself away from the terror and violence of the sovereign elites toward the horizon of freedom and care, which is the pre- existing ontological ground of the difference mentioned by Machiavelli between the nobles and the people, the 1% (to use a terminology different from Machiavelli’s) and the 99%. What is important is that the sovereign elite and its war machine, its police apparatuses, its false sense of the law, be done with. It is important that the sovereigns be shown, as Agamben says, in “their original proximity to the criminal” (2000: 107) and that they be dealt with accordingly. For this to happen, a true sense of the law must be recuperated, one whereby the law is also immediately ethics. The sovereigns will be brought to justice. The process is long, but it is in many ways already underway. The recent news that a human rights lawyer will lead a UN investigation into the question of drone strikes and other forms of targeted killing (The New York Times, January 24, 2013) is an indication of the fact that the movement of those who do not want to be dominated is not without effect. An initiative such as this is perhaps necessarily timid at the outset and it may be sidetracked in many ways by powerful interests in its course. Yet, even positing, at that institutional level, the possibility that drone strikes be a form of unlawful killing and war crime is a clear indication of what common reason (one is tempted to say, the General Intellect) already understands and knows. The hope of those who “would prefer not to” be involved in a violent practice such as this, is that those responsible for it be held accountable and that the horizon of terror be canceled and overcome. Indeed, the earth needs care. And when instead of caring for it, resources are dangerously wasted and abused, it is imperative that those who know and understand revolt –and what they must revolt against is the squandering and irresponsible elites, the sovereign discourse, whose authority, beyond all nice rhetoric, ultimately rests on the threat of military violence and police brutality

#### Refuse attempts to reform the system and doom it to its own nihilistic destruction—we must refuse all conceptual apparatuses of capture—that intellectuals subtraction is crucial

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

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

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

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

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

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

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

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

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

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

#### Reject their legal framework for solving the problem of indefinite detention in favor of investing in a more expansive definition of political community—legal accountability is too soon and will fail without an interrogation of what life can be excluded from definitions of legally human

Butler 4—not Judy

(Judith, *Precarious Life* pg 86-92, dml)

So, these prisoners, who are not prisoners, will be tried, if they will be tried, according to rules that are not those of a constitutionally defined US law nor of any recognizable international code. Under the Geneva Convention, the prisoners would be entitled to trials under the same procedures as US soldiers, through court martial or civilian courts, and not through military tribunals as the Bush administration has proposed. The current regulations for military tribunals provide for the death penalty if all members of the tribunal agree to it. The President, however, will be able to decide on that punishment unilaterally in the course of the final stage of deliberations in which an executive judgment is made and closes the case. Is there a timeframe set forth in which this particular judicial operation will cease to be? In response to a reporter who asked whether the government was not creating procedures that would be in place indefinitely, "as an ongoing additional judicial system created by the executive branch," General Counsel Haynes pointed out that the "the rules [for the tribunals] ... do not have a sunset provision in them ... I'd only observe that the war, we think, will last for a while." One might conclude with a strong argument that government policy ought to follow established law. And in a way, that is part of what I am calling for. But there is also a problem with the law, since it leaves open the possibility of its own retraction, and, in the case of the Geneva Convention, extends "universal" rights only to those imprisoned combatants who belong to "recognizable" nation-states, but not to all people. Recognizable nation-states are those that are already signatories to the convention itself. This means that stateless peoples or those who belong to states that are emergent or "rogue" or generally unrecognized lack all protections. The Geneva Convention is, in part, a civilizational discourse, and it nowhere asserts an entitlement to protection against degradation and violence and rights to a fair trial as universal rights. Other international covenants surely do, and many human rights organizations have argued that the Geneva Convention can and ought to be read to apply universally. The International Committee of the Red Cross made this point publicly (February 8, 2002). Kenneth Roth, Director of Human Rights Watch, has argued strongly that such rights do pertain to the Guantanamo Prisoners (January 28, 2002), and the Amnesty International Memorandum to the US Government (April 15, 2002), makes clear that fifty years of international law has built up the assumption of universality, codified clearly in Article 9(4) of the International Covenant on Civil and Political Rights, ratified by the US in 1992. Similar statements have been made by the International Commission on Jurists (February 7, 2002) and the Organization for American States human rights panel made the same claim (March 13, 2002), seconded by the Center for Constitutional Rights (June ro, 2002). Exclusive recourse to the Geneva Convention, itself drafted in 1949, as the document for guidance in this area is thus in itself problematic. The notion of "universality" embedded in that document is restrictive in its reach: it counts as subjects worthy of protection only those who belong already to nation-states recognizable within its terms. In this way, then, the Geneva Convention is in the business of establishing and applying a selective criterion to the question of who merits protection under its provisions, and who does not. The Geneva Convention assumes that certain prisoners may not be protected by its statute. By clearly privileging those prisoners from wars between recognizable states, it leaves the stateless unprotected, and it leaves those from nonrecognized polities without recourse to its entitlements. Indeed, to the extent that the Geneva Convention gives grounds for a distinction between legal and illegal combatants, it distinguishes between legitimate and illegitimate violence. Legitimate violence is waged by recognizable states or "countries," as Rumsfeld puts it, and illegitimate violence is precisely that which is committed by those who are landless, stateless, or whose states are deemed not worth recognizing by those who are already recognized. In the present climate, we see the intensification of this formulation as various forms of political violence are called "terrorism," not because there are valences of violence that might be distinguished from one another, but as a way of characterizing violence waged by, or in the name of, authorities deemed illegitimate by established states. As a result, we have the sweeping dismissal of the Palestinian Intifada as "terrorism" by Ariel Sharon, whose use of state violence to destroy homes and lives is surely extreme. The use of the term, "terrorism," thus works to delegitimate certain forms of violence committed by non-state-centered political entities at the same time that it sanctions a violent response by established states. Obviously, this has been a tactic for a long time as colonial states have sought to manage and contain the Palestinians and the Irish Catholics, and it was also a case made against the African National Congress in apartheid South Africa. The new form that this kind of argument is taking, and the naturalized status it assumes, however, will only intensify the enormously damaging consequences for the struggle for Palestinian self-determination. Israel takes advantage of this formulation by holding itself accountable to no law at the very same time that it understands itself as engaged in legitimate self-defense by virtue of the status of its actions as state violence. In this sense, the framework for conceptualizing global violence is such that "terrorism" becomes the name to describe the violence of the illegitimate, whereas legal war becomes the prerogative of those who can assume international recognition as legitimate states. The fact that these prisoners are seen as pure vessels of violence, as Rumsfeld claimed, suggests that they do not become violent for the same kinds of reason that other politicized beings do, that their violence is somehow constitutive, groundless, and infinite, if not innate. If this violence is terrorism rather than violence, it is conceived as an action with no political goal, or cannot be read politically. It emerges, as they say, from fanatics, extremists, who do not espouse a point of view, but rather exist outside of "reason," and do not have a part in the human community. That it is Islamic extremism or terrorism simply means that the dehumanization that Orientalism already performs is heightened to an extreme, so that the uniqueness and exceptionalism of this kind of war makes it exempt from the presumptions and protections of universality and civilization. When the very human status of those who are imprisoned is called into question, it is a sign that we have made use of a certain parochial frame for understanding the human, and failed to expand our conception of human rights to include those whose values may well test the limits of our own. The figure of Islamic extremism is a very reductive one at this point in time, betraying an extreme ignorance about the various social and political forms that Islam takes, the tensions, for instance, between Sunni and Shiite Muslims, as well as the wide range of religious practices that have few, if any, political implications such as the da'wa practices of the mosque movement, or whose political implications are pacifist. If we assume that everyone who is human goes to war like us, and that this is part of what makes them recognizably human, or that the violence we commit is violence that falls within the realm of the recognizably human, but the violence that others commit is unrecognizable as human activity, then we make use of a limited and limiting cultural frame to understand what it is to be human. This is no reason to dismiss the term "human," but only a reason to ask how it works, what it forecloses, and what it sometimes opens up. To be human implies many things, one of which is that we are the kinds of beings who must live in a world where clashes of value do and will occur, and that these clashes are a sign of what a human community is. How we handle those conflicts will also be a sign of our humanness, one that is, importantly, in the making. Whether or not we continue to enforce a universal conception of human rights at moments of outrage and incomprehension, precisely when we think that others have taken themselves out of the human community as we know it, is a test of our very humanity. We make a mistake, therefore, if we take a single definition of the human, or a single model of rationality, to be the defining feature of the human, and then extrapolate from that established understanding of the human to all of its various cultural forms. That direction will lead us to wonder whether some humans who do not exemplify reason and violence in the way defined by our definition are still human, or whether they are "exceptional" (Haynes) or "unique" (Hastert), or "really bad people" (Cheney) presenting us with a limit case of the human, one in relation to which we have so far failed. To come up against what functions, for some, as a limit case of the human is a challenge to rethink the human. And the task to rethink the human is part of the democratic trajectory of an evolving human rights jurisprudence. It should not be surprising to find that there are racial and ethnic frames by which the recognizably human is currently constituted. One critical operation of any democratic culture is to contest these frames, to allow a set of dissonant and overlapping frames to come into view, to take up the challenges of cultural translation, especially those that emerge when we find ourselves living in proximity with those whose beliefs and values challenge our own at very fundamental levels. More crucially, it is not that "we" have a common idea of what is human, for Americans are constituted by many traditions, including Islam in various forms, so any radically democratic self-understanding will have to come to terms with the heterogeneity of human values. This is not a relativism that undermines universal claims; it is the condition by which a concrete and expansive conception of the human will be articulated, the way in which parochial and implicitly racially and religiously bound conceptions of human will be made to yield to a wider conception of how we consider who we are as a global community. We do not yet understand all these ways, and in this sense human rights law has yet to understand the full meaning of the human. It is, we might say, an ongoing task of human rights to reconceive the human when it finds that its putative universality does not have universal reach. The question of who will be treated humanely presupposes that we have first settled the question of who does and does not count as a human. And this is where the debate about Western civilization and Islam is not merely or only an academic debate, a misbegotten pursuit of Orientalism by the likes of Bernard Lewis and Samuel Huntington who regularly produce monolithic accounts of the "East," contrasting the values of Islam with the values of Western "civilization." In this sense, "civilization" is a term that works against an expansive conception of the human, one that has no place in an internationalism that takes the universality of rights seriously. The term and the practice of "civilization" work to produce the human differentially by offering a culturally limited norm for what the human is supposed to be. It is not just that some humans are treated as humans, and others are dehumanized; it is rather that dehumanization becomes the condition for the production of the human to the extent that a "Western" civilization defines itself over and against a population understood as, by definition, illegitimate, if not dubiously human. A spurious notion of civilization provides the measure by which the human is defined at the same time that a field of would-be humans, the spectrally human, the deconstituted, are maintained and detained, made to live and die within that extra-human and extrajuridical sphere of life. It is not just the inhumane treatment of the Guantanamo prisoners that attests to this field of beings apprehended, politically, as unworthy of basic human entitlements. It is also found in some of the legal frameworks through which we might seek accountability for such inhuman treatment, such that the brutality is continued-revised and displaced-in, for instance, the extra-legal procedural antidote to the crime. We see the operation of a capricious proceduralism outside of law, and the production of the prison as a site for the intensification of managerial tactics untethered to law, and bearing no relation to trial, to punishment, or to the rights of prisoners. We see, in fact, an effort to produce a secondary judicial system and a sphere of non-legal detention that effectively produces the prison itself as an extra-legal sphere maintained by the extrajudicial power of the state. This new configuration of power requires a new theoretical framework or, at least, a revision of the models for thinking power that we already have at our disposal. The fact of extra-legal power is not new, but the mechanism by which it achieves its goals under present circumstances is singular. Indeed, it may be that this singularity consists in the way the "present circumstance" is transformed into a reality indefinitely extended into the future, controlling not only the lives of prisoners and the fate of constitutional and international law, but also the very ways in which the future may or may not be thought.

#### This card is really confusing but shockingly relevant to their aff

Agamben 98. Giorgio Agamben, professor of philosophy at the University of Verona, *Homo Sacer: Sovereign Power and Bare Life,* pg. 174

7-7- In this light, the birth of the camp in our time appears as an event that decisively signals the political space of modernity itself. It is produced at the point at which the political system of the modern nation-state, which was founded on the functional nexus between a determinate localization (land) and a determinate order (the State) and mediated by automatic rules for the inscription of life (birth or the nation), enters into a lasting crisis, and the State decides to assume directly the care of the nation's biological life as one of its proper tasks. If the structure of the nation-state is, in other words, defined by the three elements land, order, birth, the rupture of the old nomos is produced not in the two aspects that constituted it according to Schmitt (localization, Ortung, and or­ der, Ordnung), but rather at the point marking the inscription of bare life (the birth that thus becomes nation) within the two of them. Something can no longer function within the traditional mechanisms that regulated this inscription, and the camp is the new, hidden regulator of the inscription of life in the order-or, rather, the sign of the system's inability to function without being transformed into a lethal machine. It is significant that the camps appear together with new laws on citizenship and the denational­ ization of citizens-not only the Nuremberg laws on citizenship in the Reich but also the laws on denationalization promulgated by almost all European states, including France, between 1915 and 1933. The state of exception, which was essentially a temporary suspension of the juridico-political order, now becomes a new and stable spatial arrangement inhabited by the bare life that more and more can no longer be inscribed in that order. The growing dissociation of birth (bare life) and the nation-state is the new fact of politics in our day, and what we call camp is this disjunction. To an order without localization (the state of exception, in which law is suspended) there now corresponds a localization without order (the camp as permanent space of exception). The political system no longer orders forms of life and juridical rules in a determinate space, but instead contains at its very center a dislocating localiza­ tion that exceeds it and into which every form of life and every rule can be virtually taken. The camp as dislocating localization is the hidden matrix of the politics in which we are still living, and it is this structure of the camp that we must learn to recognize in all its metamorphoses into the zones d'attentes of our airports and certain outskirts of our cities. The camp is the fourth, inseparable element that has now added itself to-and so broken-the old trinity composed of the state, the nation (birth) , and land.

From this perspective, the camps have, in a certain sense, reap­ peared in an even more extreme form in the territories of the former Yugoslavia. What is happening there is by no means, as interested observers have been quick to declare, a redefinition of the old political system according to new ethnic and territorial arrangements, which is to say, a simple repetition ofprocesses that led to the constitution of the European nation-states. At issue in the former Yugoslavia is, rather, an incurable rupture of the old nomos and a dislocation of populations and human lives along entirely new lines of flight. Hence the decisive importance of ethnic rape camps. If the Nazis never thought of effecting the Final Solution by making Jewish women pregnant, it is because the principle ofbirth that assured the inscription oflife in the order of the nation-state was still-if in a profoundly transformed sense­ in operation. This principle has now entered into a process of decay and dislocation. It is becoming increasingly impossible for it to function, and we must expect not only new camps but also always new and more lunatic regulative definitions of the inscrip­ tion of life in the city. The camp, which is now securely lodged within the city's interior, is the new biopolitical nomos of the planet.

### solvency

#### A national security court wrecks due process and compromises judicial independence by cementing executive control of adjudication

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Like any competent military commander, Sulmasy structures his proposal’s features to meet his objectives. First and foremost, his national security court system would adjudicate all habeas proceedings – rather than the federal district courts, as Boumediene envisioned – thus preventing the exodus Sulmasy fears.56 Otherwise, the most striking aspect of his proposed court system is its structural similarity to traditional military commissions; as Sulmasy envisions, the former represents “an outgrowth” of the latter, not a paradigm shift.57 Suspected terrorists would be detained in military brigs and trials conducted on military bases, as “has been the practice [] for generations.”58 Military judge advocates would supply both prosecution and defense counsel in habeas proceedings, although civilian prosecutors would supplement the former during full prosecution.59 Procedurally, the national security court system would “adopt virtually all [] aspects of the Military Commissions Act of 2006.”60 The merit of this structure, according to Sulmasy, consists in that it “includes the military’s input and can be seen as overt recognition that this is a war requiring military expertise.”61 Less euphemistically, the military would retain far greater control over logistics than in the alternative scenario of federal district court, mitigating the “pervasive elasticity in the rules governing [regular federal] judicial proceedings, over which [those] judges have a degree of supervisory authority.”62

Virtually the only significant departure from the military paradigm is the one forced by Boumediene: adjudication by civilian federal judges. Nevertheless, Sulmasy does everything possible to control the latter’s influence, borrowing heavily from earlier proposals by other conservative commentators.63 More precisely, the court’s constituting legislation “must be specific as to the . . . limited authority of the court.”64 Most critically, “[it] needs to limit the creativity of the court . . . mak[ing] clear to the judges that this is not an ordinary criminal court, and, as such, the judges should refrain from making analogies to the civilian system in deciding their cases.”65 Security court judges, in other words, would be “legislatively guide[d]” away from extending further constitutional rights to detainees.66 In addition, any departure from the legislated strictures of the court would be subject to immediate, as-of-right, interlocutory appeal by the prosecution (i.e., the military judge advocates), though not the defense; such interlocutory appeals would be reviewed on a standard of “error[] committed in applying the National Security Court legislation.”67 All these features quite obviously buttress the executive’s control over the adjudicatory process and the substantive findings available to the court.

#### This causes rubber-stamping of executive detention decisions

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The preceding developments would still not equate to the Shapiro/Stephen model of jurisdictional transfer if FISC was similarly independent to the federal courts that would otherwise review warrant applications. Importantly however, FISC has demonstrated an astounding lack of independence over its three-decade history: between 1978 and 2004, the court processed 18,742 warrant applications, modifying 181 and denying only four.169 "What emerges from this data,” observes Theodore Ruger, “is a government success rate unparalleled in any other American court.”170 A former National Security Agency intern and now law professor, Jonathan Turley, opines that FISC “would have signed anything that we put in front of [it].”171 As a result, several commentators regard FISC as “little more than a rubberstamp” for the executive.172 The court’s appellate branch, the Foreign Intelligence Surveillance Act Court of Review, is publicly known to have convened only twice: in 2002, overturning restrictions FISC had placed on a warrant,173 and in 2008, upholding controversial amendments to the Foreign Intelligence Surveillance Act.174 Prior to these two anomalous decisions, one of the appellate branch’s former judges reportedly stated that his position was “an empty title as far as I am concerned.”175 Based on its track record, one can reasonably suspect that FISC operates as a non-independent forum to which the government has transferred warrant review, precisely reflecting the dynamic of Shapiro and Stephen’s theoretical model.

FISC’s dubious record would perhaps be unsurprising were the court comprised of Article I adjudicators, in accordance with Meltzer’s vision for how Shapiro and Stephen’s process would unfold in the United States.176 Interestingly however, FISC is composed of eleven Article III judges drawn from among the federal district courts, selected by the Chief Justice of the U.S. Supreme Court.177 These judges maintain regular district court caseloads and serve on FISC part-time, for seven-year, nonrenewable terms.178 Despite the court’s track record, therefore, one is at pains to detect any apparent source of dependence among its judges. Ruger attempts to solve this puzzle empirically by examining Chief Justice Rehnquist’s appointments to FISC in 1992, 1997, and 2002.179 What Ruger uncovers is strikingly reminiscent of the manner by which Spain’s Tribunal de Orden Público achieved its remarkable lack of independence despite being composed of apparently independent judges. More specifically, Ruger hypothesizes that would-be FISC judges “self-promoted” themselves to the Chief Justice – known for his conservative, pro-government ideology – by submitting more progovernment Fourth Amendment decisions for publication than their colleagues.180 This signaling practice enabled the Chief Justice to more easily select pro-government FISC judges.181 This careerism produced, as in Spain, a nominally independent court that in practice operates to implement the executive’s will, as its record attests.

The preceding analysis of FISC holds significant implications for Sulmasy’s proposed national security court system. Starkly phrased, the mere presence of Article III judges is no magic bullet. Moreover, the criteria of judicial selection operating in both Spain’s Tribunal de Orden Público and FISC appear analogous to Sulmasy’s proposal, in that his court would be comprised of judges “versed in this unique area of law” – which, as reviewed earlier, Sulmasy employs as a euphemism for judges sympathetic to the executive and therefore willing to limit their “creativity” while interpreting constitutional rights.182 Meltzer recognizes this problem in the abstract, arguing that specialized courts are more vulnerable to political influence than generalist courts – a prediction that FISC radically bears out – and thus liberal scholars should not presume that specialized Article III courts would by themselves solve the independence problems of Article I tribunals.183 Whether Sulmasy’s bench consists of Article I or Article III adjudicators therefore appears less determinative of its independence that one would intuitively suspect.184

As Judith Resnik argues, “Article III looks thin . . . [it] misses the institutional needs of a judiciary . . . for its ability to work, let alone to be a player in governance.”185 Extending Reznik’s insight, one might hypothesize that structural bias in a court system will prejudice independence even where Article III judges are present. Neither FISC nor Sulmasy’s proposal fare well in this respect: both systems exhibit built-in pro-government bias, which can only exacerbate their anterior judicial independence deficits. For instance, as Ruger observes, an important reason why FISC’s appellate branch virtually never convenes is that only government can appeal,186 which in turn likely promotes stronger pro-government bias at first instance due to a lack of oversight.187 Similarly, only the prosecution (i.e., the military) may bring as-of-right interlocutory appeals in Sulmasy’s proposal,188 which one would expect to instill bias into its procedural jurisprudence. The accretion of further sources of bias – for example, both prosecution and representation of suspected terrorists by military judge advocates,189 executive control over facilities and logistics,190 and executive-biased presumptions about the proper balance between constitutional rights and military objectives191 – can only worsen this problem. The military’s pervasive institutional integration within Sulmasy’s national security court system clearly fails to satisfy the institutional needs of independence to which Resnik refers. Sulmasy’s proposal therefore, if implemented, would risk repeating the FISC debacle.192

#### It will be perceived as replicating Guantanamo – it shreds US credibility and undermines allied cooperation

**Colson, 9** - Acting Director, Law & Security Program at Human Rights First (Deborah, “The Case Against A Special Terrorism Court” March)

Proposals for a special terrorism court should be rejected

􀂄 A special terrorism court is unnecessary and impractical: Among the many lessons learned from the misguided Guantánamo episode are the practical difficulties of trying to create new, ad hoc justice systems. Just like the military commissions at Guantánamo, a new court inevitably would be bogged down in litigation and delay.

􀂄 Our procedural safeguards and evidentiary standards comprise the bedrock of American justice: A new court would undermine the integrity of the justice system and perpetuate the damage to America’s reputation for fairness and transparency done by unjust military commissions and prolonged detention without charge at Guantánamo.

􀂄 Special courts and detention without trial undermine U.S. counterterrorism strategy: Creating a state-side replica of the Guantánamo legal regime would impair counterterrorism cooperation with our allies and fuel terrorist recruitment.

#### It also expands the scope of detention by expanding beyond traditional terrorism capabilities

**Schulhofer, 9** – professor of law at New York University (Stephen, “Unraveling Guantánamo: Detention, Trials and the "Global War" Paradigm” 3/5, New York University Public Law and Legal Theory Working Papers. Paper 117. <http://lsr.nellco.org/nyu_plltwp/117>)

4. Enemy combatants on the broader “battlefield.” Once we accept flexible procedures for combatants captured in battle in Afghanistan, it’s only a small step, the Bush administration has insisted, to recognize that cities and industrial plants everywhere are now potential targets too. In this “new kind of war,” terrorists apprehended anywhere in the world should therefore be treated like combatants seized on a conventional battlefield. The administration invoked this approach to justify military custody, without access to the counsel or the courts, not only for non-battlefield detainees at Guantánamo, but also for Jose Padilla, an alleged “enemy combatant” who is a U.S. citizen arrested at O’Hare airport, and Ali al-Marri, a lawful resident alien arrested in Peoria, Illinois, where he was living with his family.

The theory of a broadened “battlefield,” with “enemy combatants” who are living among civilians, has yet to be definitely tested in post-9/11 cases. In Hamdi, the Supreme Court upheld the general concept of enemy combatant detention but expressly confined its analysis to a narrow version of that category – individuals who “[supported] forces hostile to the United States or coalition partners in Afghanistan and who engaged in an armed conflict against the United States there."19 Al-Marri’s case, a far-reaching example of the broader concept, is now before the Supreme Court, and he remains at the Charleston naval brig after more than six years in military custody.20 Any long-term resolution of the Guantánamo problem must come to grips with this broad “enemy combatant” theory, which is an essential underpinning for the military approach to the apprehension and detention of terror suspects worldwide. How should the theory be assessed?

The move beyond the combat environment is not simply a minor enlargement or logical extension of the military model. To be sure, everyone understands that terrorists may strike indiscriminately and with great destructive force, at any time or place. But even if O’Hare airport is now similar in that respect to a conventional battlefield, there are obvious differences. Equating the two, as the Bush administration has sought to do, carries momentous implications, because that step, once accepted, legitimates military powers in circumstances where law enforcement constraints would otherwise apply. Extending military authority from combat situations to civilian settings therefore cannot follow automatically from a partial analogy between the two contexts. We also need to consider the differences.

The differences, of course, are dramatic. Lethal force and summary procedures are much more dangerous when suspects purporting to be civilians are found living in the midst of a law-abiding community outside the zone of combat. The importance of split-second responses and “military operational judgments” decreases as we move away from the heat of battle. Non-military alternatives, such as conventional law enforcement, are non-existent in combat but are usually available elsewhere. And the facts needed to identify an “enemy combatant” are directly observable on the battlefield but are inevitably more elusive and circumstantial in the case of suspected enemies who blend in with the civilian population. Outside the combat environment, informal proceedings carry greatly diminished justification but far greater risk of error.

For some, however, the case for military flexibility rests on more than the tactical imperatives of combat. In wartime, mass casualties or even national survival may be at stake. And where decisions depend on the subtleties of military intelligence, there is greater need for professional military expertise.

But these attractions of the military model have never (before 9/11) been considered sufficient to extend its reach. Because the permissive rules of armed conflict displace ordinary limits on detention and the use of deadly force, they alter for any society, the defining framework of government itself.21 And because the executive authority cannot be left free to confer on itself the powers of detention and summary killing that warfare permits, both domestic and international law have long resisted efforts to enlarge the domain where the rules of war apply. Both traditions insist that any extension of the warfare framework be justified by strict necessity, not simply by credible references to analogous military needs.22 Accordingly, both domestic and international law tightly confine the prerogatives of warfare – by limiting the circumstances that qualify as “war” and by limiting the classes of individuals who are subject to military powers even in times of war.23

#### That independently turns the whole case

**Schulhofer, 9** – professor of law at New York University (Stephen, “Unraveling Guantánamo: Detention, Trials and the "Global War" Paradigm” 3/5, New York University Public Law and Legal Theory Working Papers. Paper 117. <http://lsr.nellco.org/nyu_plltwp/117>)

A national security court, apart from its practical difficulties and inevitable start-up glitches, will plant the seeds of fundamental, long-lasting damage to the national well-being. We have never had a “comprehensive system of preventive detention,” and such a system, once instituted, will be difficult to contain. The problem is not just that its legal boundaries are almost certain to creep outward over time. More fundamentally, a permanent new detention regime and a permanent national security court will entrench a psychology of permanent danger, with the paradox of permanent need for emergency powers. To be sure, judicial oversight of any sort will be an improvement over the unchecked presidential power the Bush administration so nearly succeeded in amassing. But to establish a special court with “national security” detention powers unavoidably legitimates a concept of judicial oversight with vastly diminished transparency and accountability. The long-term effect on America’s political culture, in particular our conception of liberty and limited government, is unpredictable but, to say the least, unimaginably risky. This is not a move to make in the absence of clearly demonstrated necessity.

### democracy

**Authoritarian states don’t follow norms — their “US justifies others” arg is naive**

John O. **McGinnis 7**, Professor of Law, Northwestern University School of Law. \*\* Ilya Somin \*\* Assistant Professor of Law, George Mason University School of Law. GLOBAL CONSTITUTIONALISM: GLOBAL INFLUENCE ON U.S. JURISPRUDENCE: Should International Law Be Part of Our Law? 59 Stan. L. Rev. 1175

The second benefit to foreigners of distinctive U.S. legal norms is information. The costs and benefits of our norms will be visible for all to see. n268 Particularly in an era of increased empirical social science testing, over time we will be able to analyze and identify the effects of differences in norms between the United States and other nations. n269 Such diversity benefits foreigners as foreign nations can decide to **adopt our good norms and avoid our bad ones**.

The only noteworthy counterargument is the claim that U.S. norms will have more harmful effects than those of raw international law, yet other nations will still copy them. But both parts of this proposition seem doubtful. First, U.S. law emerges from a democratic process that creates a likelihood that it will cause less harm than rules that emerge from the nondemocratic processes [\*1235] that create international law. Second, other democratic nations can use their own political processes to screen out American norms that might cause harm if copied.

Of course, many nations remain authoritarian. n270 But our norms are not likely to have much influence on their choice of norms. Authoritarian states are likely to select norms that serve the interests of those in power, regardless of the norms we adopt. It is true that **sometimes they might cite our norms as cover for their decisions. But the crucial word here is "cover."** **They would have adopted the same rules, anyway.** The cover may bamboozle some and thus be counted a cost. But this would seem marginal compared to the harm of allowing raw international law to trump domestic law.

#### Democracy doesn’t solve war

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In the last couple of decades there has been a burgeoning and intriguing discussion about the connection between democracy and war aversion.7 Most notable has been the empirical observation that democracies have never, or almost never, gotten into a war with each other. This relationship seems more correlative than causal, however. Like many important ideas over the last few centuries, the idea that war is undesirable and inefficacious and the idea that democracy is a good form of government have largely followed the same trajectory: they were embraced first in northern Europe and North America and then gradually, with a number of traumatic setbacks, became more accepted elsewhere. In this view, the rise of democracy not only is associated with the rise of war aversion, but also with the decline of slavery, religion, capital punishment, and cigarette smoking, and with the growing acceptance of capitalism, scientific methodology, women's rights, environmentalism, abortion, and rock music.8 While democracy and war aversion have taken much the same trajectory, however, they have been substantially out of synchronization with each other: the movement toward democracy began about 200 years ago, but the movement against war really began only about 100 years ago (Mueller 1989, 2004). Critics of the democracy/peace connection often cite examples of wars or near-wars between democracies. Most of these took place before World War I--that is, before war aversion had caught on.9 A necessary, logical connection between democracy and war aversion, accordingly, is far from clear. Thus, it is often asserted that democracies are peaceful because they apply their domestic penchant for peaceful compromise (something, obviously, that broke down in the United States in 1861) to the international arena or because the structure of democracy requires decision-makers to obtain domestic approval.10 But authoritarian regimes must also necessarily develop skills at compromise in order to survive, and they all have domestic constituencies that must be serviced such as the church, the landed gentry, potential urban rioters, the nomenklatura, the aristocracy, party members, the military, prominent business interests, the police or secret police, lenders of money to the exchequer, potential rivals for the throne, the sullen peasantry.11 Since World War I, the democracies in the developed world have been in the lead in rejecting war as a methodology. Some proponents of the democracy-peace connection suggest that this is because the democratic norm of non-violent conflict resolution has been externalized to the international arena. However, developed democracies have not necessarily adopted a pacifist approach, particularly after a version of that approach failed so spectacularly to prevent World War II from being forced upon them. In addition, they were willing actively to subvert or to threaten and sometimes apply military force when threats appeared to loom during the Cold War contest. At times this approach was used even against regimes that had some democratic credentials such as in Iran in 1953, Guatemala in 1954, Chile in 1973, and perhaps Nicaragua in the 1980s (Rosato 2003, 590-91). And, they have also sometimes used military force in their intermittent efforts to police the post-Cold War world (Mueller 2004, chs. 7, 8). It is true that they have warred little or not at all against each other--and, since there were few democracies outside the developed world until the last quarter of the twentieth century, it is this statistical regularity that most prominently informs the supposed connection between democracy and peace. However, the developed democracies hardly needed democracy to decide that war among them was a bad idea.12 In addition, they also adopted a live-and-let-live approach toward a huge number of dictatorships and other non-democracies that did not seem threatening during the Cold War--in fact, they often aided and embraced such regimes if they seemed to be on the right side in the conflict with Communism. Moreover, the supposed penchant for peaceful compromise of democracies has not always served them well when confronted with civil war situations, particularly ones involving secessionist demands. The process broke down into civil warfare in democratic Switzerland in 1847 and savagely so in the United States in 1861. Democracies have also fought a considerable number of wars to retain colonial possessions--six by France alone since World War II--and these, as James Fearon and David Laitin suggest, can in many respects be considered essentially to be civil wars (2003, 76). To be sure, democracies have often managed to deal with colonial problems peacefully, mostly by letting the colonies go. But authoritarian governments have also done so: the Soviet Union, for example, withdrew from his empire in Eastern Europe and then dissolved itself, all almost entirely without violence. Thus, while democracy and war aversion have often been promoted by the same advocates, the relationship does not seem to be a causal one. And when the two trends are substantially out of step today, democracies will fight one another. Thus, it is not at all clear that telling the elected hawks in the Jordanian parliament that Israel is a democracy will dampen their hostility in the slightest. And various warlike sentiments could be found in the elected parliaments in the former Yugoslavia in the early 1990s or in India and then-democratic Pakistan when these two countries engaged in armed conflict in 1999. If Argentina had been a democracy in 1982 when it seized the Falkland Islands (a very popular undertaking), it is unlikely that British opposition to the venture would have been much less severe. "The important consideration," observes Miriam Fendius Elman after surveying the literature on the subject, does not seem to be "whether a country is democratic or not, but whether its ruling coalition is committed to peaceful methods of conflict resolution." As she further points out, the countries of Latin America and most of Africa have engaged in very few international wars even without the benefit of being democratic (for a century before its 1982 adventure, Argentina, for example, fought none at all) (1997, 484, 496). (Interestingly, although there has also been scarcely any warfare between Latin American states for over 100 years or among Arab ones or European ones for more that 50--in all cases whether democratic or not--this impressive phenomenon has inspired remarkably few calls for worldwide Arab colonialism or for the systematic transplant of remaining warlike states to Latin America or Europe.) And, of course, the long peace enjoyed by developed countries since World War II includes not only the one that has prevailed between democracies, but also the even more important one between the authoritarian east and the democratic west. Even if there is some connection, whether causal or atmospheric, between democracy and peace, it cannot explain this latter phenomenon. Democracy and the democratic peace become mystiques: the role of philosophers and divines Democracy has been a matter of debate for several millennia as philosophers and divines have speculated about what it is, what it might become, and what it ought to be. Associated with these speculations has been a tendency to emboss the grubby gimmick with something of a mystique. Of particular interest for present purposes is the fanciful notion that democracy does not simply express and aggregate preferences, but actually somehow creates (or should create) them. In addition, the (rough) correlation between democracy and war aversion has also been elevated into a causal relationship.

#### Uighur, Non-unique and No Internal Link – unrest now and china will respond with economic investment not crackdowns

**KRISHNAN 11** (Ananth; “China plans new economic zones near western border” The Hindu)

China has unveiled new plans to speed up the construction of two economic development zones in far-western Xinjiang, pledging greater investment, fiscal subsidies and measures to accelerate connecting the border region to Pakistan through railway lines and air routes. The State Council, or Chinese cabinet, outlined the measures in a policy document released on Saturday, which, for the first time, detailed Beijing's already announced ambitious plans to set up two economic development zones in the frontier cities of Kashgar and Korgas, respectively located near China's borders with disputed Pakistan-occupied Kashmir (PoK) and Kazakhstan. The measures come as a number of companies which have planned to invest in the region have expressed concern over recent violence in Kashgar. Knife and bomb attacks in July, blamed by the local government on terrorists with links to Pakistan-based groups, left at least 20 people dead. The region has also seen ethnic unrest between the native Uighur population and Han Chinese migrants. Many companies have voiced fears that investment promised in plans to transform the city into a “Shenzhen of the west” have failed to materialise, according to representatives of three companies which have recently set up businesses in the region. Shenzhen, a sleepy southern fishing village, was China's first Special Economic Zone, transformed into a major trading hub.

#### No Asia war, tons of checks

**Feng 10 –** professor at the Peking University International Studies [Zhu, “An Emerging Trend in East Asia: Military Budget Increases and Their Impact”, http://www.fpif.org/articles/an\_emerging\_trend\_in\_east\_asia?utm\_source=feed]

As such, the surge of defense expenditures in East Asia does not add up to an arms race. No country in East Asia wants to see a new geopolitical divide and spiraling tensions in the region. The growing defense expenditures powerfully illuminate the deepening of a regional “security dilemma,” whereby the “defensive” actions taken by one country are perceived as “offensive” by another country, which in turn takes its own “defensive” actions that the first country deems “offensive.” As long as the region doesn’t split into rival blocs, however, an arms race will not ensue. What is happening in East Asia is the extension of what Robert Hartfiel and Brian Job call “competitive arms processes.” The history of the cold war is telling in this regard. Arm races occur between great-power rivals only if the rivalry is doomed to intensify. The perceived tensions in the region do not automatically translate into consistent and lasting increases in military spending. Even declared budget increases are reversible. Taiwan’s defense budget for fiscal year 2010, for instance, will fall 9 percent. This is a convincing case of how domestic constraints can reverse a government decision to increase the defense budget. Australia’s twenty-year plan to increase the defense budget could change with a domestic economic contraction or if a new party comes to power. China’s two-digit increase in its military budget might vanish one day if the type of regime changes or the high rate of economic growth slows. Without a geopolitical split or a significant great-power rivalry, military budget increases will not likely evolve into “arms races.” The security dilemma alone is not a leading variable in determining the curve of military expenditures. Nor will trends in weapon development and procurement inevitably induce “risk-taking” behavior. Given the stability of the regional security architecture—the combination of U.S.-centered alliance politics and regional, cooperation-based security networking—any power shift in East Asia will hardly upset the overall status quo. China’s military modernization, its determination to “prepare for the worst and hope for the best,” hasn’t yet led to a regional response in military budget increases. In contrast, countries in the region continue to emphasize political and economic engagement with China, though “balancing China” strategies can be found in almost every corner of the region as part of an overall balance-of-power logic. In the last few years, China has taken big strides toward building up asymmetric war capabilities against Taiwan. Beijing also holds to the formula of a peaceful solution of the Taiwan issue except in the case of the island’s de jure declaration of independence. Despite its nascent capability of power projection, China shows no sign that it would coerce Taiwan or become **militarily assertive** over contentious territorial claims ranging from the Senkaku Islands to the Spratly Islands to the India-China border dispute. 

### legitimacy

#### No solvency – multiple other steps that would have to be taken to restore cred

**Nossel, 08** – Suzanne, former Deputy Assistant Secretary of State for International Organization Affairs (“Closing Guantanamo Is Just the Beginning,” The Guardian, 11/20/08, http://www.truth-out.org/archive/item/81134-closing-guantanamo-is-just-the-beginning //Red)

Building US credibility on human rights **will be a long-term project** - and closing Guantánamo might just be the easy bit. During his first television interview after winning the White House, president-elect Barack Obama reiterated his long-standing promise to shut Guantánamo Bay. Since the historic vote, legal and policy circles, journalists and human rights activists have hummed about when and how the notorious prison's doors will slam shut once and for all, and what will happen to some 250 detainees still held there. While the incoming president and his team are right to put Guantánamo at the top of their priority list, when it comes to restoring American leadership on human rights, closing the prison is only a first step. Guantánamo has become an emblem of the erosion of US legitimacy on human rights issues over the last eight years. Because it is under direct US control, is near US shores and has been the site of abusive interrogations and years of indefinite detention without charge, the prison has been a focal point for public outrage both at home and abroad. While the incoming administration's commitment is unquestionable, closing Guantánamo may not be as simple as it looks. While human rights and legal groups have argued convincingly that US federal courts are well equipped to try the remaining detainees who have been implicated in criminal offences, some experts continue to argue for a new brand of preventative detention that could continue to deprive Guantánamo prisoners of basic due process rights, effectively moving the prison to the continental US. Realistically it could be months - many months - before the legal disposition of every last detainee is resolved, and the facility shuttered. In the meantime, it is essential that the new administration look **well beyond Guantánamo and begin to confront an array of other issues** that are essential to restoring a leadership role for the US on human rights. The most basic involve ensuring that the abuses with which Guantánamo has become synonymous do not outlast the prison itself. There have been wide calls for an executive order that would apply rules on interrogations set forth in the US army's field manual to all US personnel, including the CIA. The new president should also end renditions - forced transfers - of detainees to countries where they face risk of torture, and close permanently the shadowy network of secret prisons where detainees are effectively "disappeared". Bagram air base in Afghanistan holds some 600 detainees. While many were captured on battlefields in Afghanistan, others were picked up from their homes, far from the main areas of the insurgency, and at least a handful were apparently brought there from elsewhere to be held indefinitely without charge. The prisoners lack access to legal counsel, and because the facility is on Afghan territory, the US justice department has argued that US habeas rights do not apply. Devising a fair process to adjudicate the status of these detainees will be essential to ensuring that Bagram is not the next Guantánamo. While abuses carried out as part of the fight against terrorism cost the US its position of leadership on human rights issues globally, **regaining that status will require more than just bringing counter-terrorism tactics in line with international norms.** While the Bush administration hailed democracy and freedom as centrepieces of its foreign policy, in practice it tended to sideline human rights considerations within its important bilateral relationships. To cite just a few examples, disregard for human rights has contributed to a culture of lawlessness in Pakistan's tribal areas. Despite $10-12bn in mostly military US aid to Pakistan since 2001, civilians affected by the current conflict are left defenceless in squalid, disease-infested camps - some of which the UN refugee agency cannot reach - where their frustration with the US-led war effort only grows. As part of its effort to stabilise this strategically vital region, the US must invest in building institutions that support the rule of law and ensuring that approaches to security uphold human rights. In neighbouring Afghanistan, the US needs to take immediate steps to reduce civilian casualties in military operations, and to press for an end to corruption, which is both fuelling the conflict and undermining popular faith in democratic governance. In contemplating political agreements to end the conflict the US must avoid strengthening the hands of the region's most brutal warlords. While human rights will not be the sole consideration governing multi-faceted relationships with foreign governments, the new administration needs to affirm their place on the agenda and work with like-minded voices to press for progress. The US also has work to do in terms of strengthening the international human rights infrastructure. The Bush administration distanced itself from the international human rights community by failing to ratify key treaties and **absenting itself from new institutions of human rights enforcement.** **The next administration must demonstrate in tangible ways that the US is prepared to cooperate with others in building and strengthening mechanisms to protect and advance human rights** in the 21st century. Its absence from key forums and debates has created space for spoilers who seek to vitiate existing human rights norms and prevent new ones from taking hold. In 2005 the UN adopted a new norm, the "responsibility to protect", affirming the duty of states to protect their own populations, and the obligation of the international community to step in when they won't do so. But the new norm has flunked its first test in Darfur, where the government has suborned rampant human rights abuses and the international community has failed to intervene effectively. Working with allies to build broad-based support for rigorous human rights enforcement is a long-term project that needs to start right away. Necessary steps also include **re-engaging with the international criminal court**, a body that has begun to prove itself as a vital instrument of international accountability for war crimes. Building US credibility on human rights will be a long-term project requiring a steady hand against the buffeting forces of foreign policy reality. Done right, **the wider human rights agenda could make closing Guantánamo look like the easy part.**

#### Can’t simply remove one abuse – Guantanamo has changed international perception of HR

**Hilde, 09** – Thomas, professor at the University of Maryland School of Public Policy where he teaches seminars in ethics and policy and international environmental and development law and politics (“Beyond Guantánamo,” http://www.lb.boell.org/downloads/Beyond\_Guantanamo.pdf //Red)

Concluding Remarks on Post-Guantánamo Human Rights human rights are meaningful if they entail a genuine commitment by each state to refrain from or extensively modify some actions even when those actions may be otherwise perceived to be in a state’s own interests. As Kant said, “all politics must bend its knee before human rights.”48 A human rights culture declares that there are some things that states cannot do to individual human beings, no matter whom the individual, especially within their own boundaries. unless we wish to shelve the idea of a “right” altogether, metaphysical or ethical justifications for civil rights apply also to human rights. the main difference is a practical one: the existence or absence of an effective enforcement mechanism. Within states, penal and regulatory systems function as means of coercive enforcement and the protection of certain sets of rights. in the international sphere, of course, **there is no** analogous **enforcement mechanism for human rights**, as is also ultimately the case with international treaties and other agreements among states. in this situation, **it will remain a temptation for powerful states to violate international human rights standards** when those states have compelling reasons to believe that doing so is, on the whole, in their interests. One might object by raising the example of the international criminal court. but some notable powerful countries and rogues have not yet signed onto the rome statute. Moreover, the underlying incentive structure of the icc may lead it to investigate and prosecute weaker, less politically risky cases.49 the icc system may be important, but it needs to mature before it can lay claim to being a fair and effective enforcement mechanism for human rights. the german philosopher Jürgen habermas writes that, “human rights are not pregiven moral truths to be discovered but rather are constructions… .”50 in the absence of an effective enforcement mechanism, the normative force of human rights is vital in this construction project. in the international sphere, genuine agreements are built upon shared norms, mutual interests, and good faith efforts to cooperate. Peremptory norms and customary law can be powerful influences, but because their normative bases are widely accepted by definition (similar to Jefferson’s claim in the Declaration that “all men are created equal” and “endowed with certain unalienable rights” are “self-evident” truths). if we understand human rights to involve an ongoing struggle to articulate their normative and practical meaning, constantly fitting and refitting local concerns and issues with the universal claims of human rights, then guantánamo leaves us with very difficult work to do in securing their future in international society. enforcement, in the end, comes through international participation in the ongoing formulation and construction of human rights values, and requires ever-growing empathy with those who suffer. it is a reasonable expectation in the international sphere that a liberal democracy, by definition, does not torture. guantánamo has **lifted the veil on that illusion.** restoring credibility, post-guantánamo, requires resolving the issue of detention policy and effecting accountability. it is no longer enough simply to resort to the faulty assumption that liberal democracies do not intentionally violate human rights. Outlined above are some of the proposed detention policies as well as a discussion of their inherent difficulties. the above discussion of accountability comprises several different aspects, legal, moral, public, and pragmatic. it is vital to restore the rule of law through clear legal policies. Justice Department investigations are thus critical. **but it is also vital to cultivate empathy in the public and international sphere.** there should thus be a more expansive congressional investigation providing the public with the information necessary to understand what is at stake and to make intelligent democratic decisions. grave errors have occurred. the ability to understand and express one’s own fallibility, however, is one of the great secrets of democratic leadership, whether by individuals or by nations. Public deliberation, in all its imperfections and in its full diversity of views, is essential to restoring credibility on human rights. it is also the democratic means by which to articulate a further empathetic understanding of human rights. Accountability can thus simultaneously serve both the goal of reconstructing credibility and the goal of extending a human rights culture.

#### Hegemony never existed – system is de-centralized, applying hegemonic mythology to policy causes blowback and destroys cooperation

Doran, 09 (Charles F., Andrew W. Mellon Prof. of International Relations, Director of the Global Theory and History Program, Director of the Center for Canadian Studies @ Johns Hopkins U., “Fooling Oneself: The Mythology of Hegemony” International Studies Review, Vol. 11.1)

More than a catalogue of techniques other governments use to resist U.S. titular hegemony, this book informs an important question, long-debated, about the concept of hegemony. If the United States is a hegemon, why does a balance of power, composed of rivals that severely disagree with hegemonic domination, not form against the dominant United States? Building on the guidelines proposed by Wohlstetter (1964, 1968) and Elmore (1985) for the making of sound policy, namely, to see the world through the lens of the other so as to anticipate what others might conclude and do, the book critiques the very notion of hegemony. In this review, I argue from the perspective that the current conception of hegemony has neither historical nor theoretical justification (Doran 1991, pp. 117-121), and that many of the categories and examples assessed here bear witness to this reality. Joseph Nye (1990) distinguished between hegemony based on domination and control and a state carrying out a leadership role. Historically, as Doran (1971) argued, all military attempts at hegemonic domination in the central system failed; other members of the system rolled back these bids for hegemony forcefully, and the subsequent peace was neither designed nor governed (Ikenberry 1989; Ikenberry and Kupchan 1990; Gaddis 2002) by any single state. Hegemony therefore involved *attempts* at c/entralized control, but never realized control. Instead, equilibrium among highly unequal states (Kissinger 2005) preserved the de-centralized nature of the international system (Vasquez 1993). Mearsheimer (2001) concurred that, as opposed to regions (Hurrell 2004) such as Eastern Europe under the Soviet Union or as opposed to the relationship between colonies and mother country (Mckeown 1983), hegemony in the central system never existed. The central international system is pluralistic, de-centralized, and subject to the rules of balance. Across long periods of history, the structure of the system changes as states follow their respective trajectories of relative power, reflecting their ability to carry out a variety of foreign policy roles. And at any point in time, states are located at highly unequal positions on these evolving power cycles. But a hegemon, a single all-powerful state, has never dominated and controlled; nor does it today; nor will it in the future. The United States is an “ordinary power” (Rosecrance 1976) like others, just more powerful, and, accordingly, more capable of providing certain leadership functions in the system. The choice of “global leadership” is far different from that of “global domination” (Brzezinski 2004). Failure to understand this reality has gotten the United States into the situation that is described in this book. The articles in *Hegemony Constrained* provide strong evidence in support of the claim that the reason a balance of power of disaffected states has not formed against the US is that, in other than defensive terms (Keohane 1984), hegemony does not exist except in the minds of a few theorists of international relations and influential advocates in policy circles. Not unexpectedly, other governments have discovered tactics to elude and to minimize the effect of such applications within US foreign policy. The excesses of application in the George W. Bush administration are the outcome of a mythology long in the making, extending from E.H. Carr’s extrapolation from British colonialism, and nurtured through American theorizing about the existence of a hegemon that dominates the system until a new rising state defeats and replaces the prior hegemon in a systems transforming war (Organski and Kugler 1980; Gilpin 1981; Modelski and Thompson 1989; Kugler and Lemke 1996;Tammen, Kugler, Lemke, Stam, Abdol-Lahian, Alsharabati, Efird, and Organski 2000). In the aftermath of the collapse of bipolarity, the belief that unipolarity meant such hegemony began affecting foreign policy decision-making and rhetoric during the Clinton administration (when America was proclaimed “the biggest bulldog on the block”). Quite in contrast is the argumentation of all prior administrations, going back to the Eisenhower administration, a time when America enjoyed greater relative power differentials (Pollins 1996) than those existing today. Yet, led by a groundswell of neo-conservative foreign policy thought (Krauthamer 1991;Mastanduno 1997; Wohlforth 1999; Kagan 2002; Barnett 2004), intellectual elites have so committed themselves to the hegemonic thesis that they have blinded themselves to the consequences of their own speculation. Should they be surprised when the “hierarchy” of international relations turns out to be non-existent, or the capacity to control even very weak and divided polities is met with frustration? Americans have invented a mythology of hegemonic domination that corresponds so poorly to the position they actually find themselves in that they cannot comprehend the responses of other governments to their actions. Bobrow and his fellow writers show the dozens of ways that other governments find to evade, and to subvert, the proscriptions and fulminations emanating from Washington. By creating a mythology of hegemony rather than learning to work with the (properly conceived) balance of power, the United States has complicated its foreign policy and vastly raised the costs of its operation (Brown et al. 2000; Brzezinski 2004). By destroying a secular, albeit brutal, Sunni Arab center of power in Iraq, the United States must now contend with a far greater problem (Fearon 2006) of itself having to hold the country together and to balance a resurgent Iran. Bogged down in Iraq, it is unable to deter aggression against allies elsewhere such as Georgia and the Ukraine, or to stop the growing Russian penetration of Latin America. By waving the flag of hegemony, the United States finds that very few other governments see the need to assist it, because hegemony is supposed to be self-financing, self-enforcing, and self-sufficient.

## 2NC

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#### The role of the judge is to be part of a new generation of revolutionary attorneys—instead of asking, what to do with the law, ask why is this law? Anything else replicates the crisis inherent in the meaning of the law.

Agamben 05. Giorgio Agamben, famous philosopher, The State of Exception, pg. 63

In the Kafka essay, the enigmatic image of a law that is studied but no longer practiced corresponds, as a sort of remnant, to the unmasking of mythico-juridical violence effected by pure violence. There is, therefore, still a possible figure of law after its nexus with violence and power has been deposed, but it is a law that no longer has force or application, like the one in which the “new attorney,” leafing through “our old books,” buries himself in study, or like the one that Foucault may have had in mind when he spoke of a “new law” that has been freed from all disci- pline and all relation to sovereignty.

What can be the meaning of a law that survives its deposition in such a way? The difficulty Benjamin faces here corresponds to a problem that can be formulated (and it was effectively formulated for the first time in primitive Christianity and then later in the Marxian tradition) in these terms: What becomes of the law after its messianic fulfillment? (This is the controversy that opposes Paul to the Jews of his time.) And what becomes of the law in a society without classes? (This is precisely the de- bate between Vyshinsky and Pashukanis.) These are the questions that Benjamin seeks to answer with his reading of the “new attorney.” Obvi- ously, it is not a question here of a transitional phase that never achieves its end, nor of a process of infinite deconstruction that, in maintain- ing the law in a spectral life, can no longer get to the bottom of it. The decisive point here is that the law—no longer practiced, but studied— is not justice, but only the gate that leads to it. What opens a passage toward justice is not the erasure of law, but its deactivation and inactivity [inoperosità]—that is, another use of the law. This is precisely what the force-of-law (whichkeepsthelawworking[inopera]beyonditsformal suspension) seeks to prevent. Kafka’s characters—and this is why they interest us—have to do with this spectral figure of the law in the state of exception; they seek, each one following his or her own strategy, to “study” and deactivate it, to “play” with it.

One day humanity will play with law just as children play with dis- used objects, not in order to restore them to their canonical use but to free them from it for good. What is found after the law is not a more proper and original use value that precedes the law, but a new use that is born only after it. And use, which has been contaminated by law, must also be freed from its own value. This liberation is the task of study, or of play. And this studious play is the passage that allows us to arrive at that justice that one of Benjamin’s posthumous fragments defines as a state of the world in which the world appears as a good that absolutely cannot be appropriated or made juridical (Benjamin 1992, 41).

#### Focus on top down executive regulation solutions reinforces a notion of sovereignty that is unitary that marginalizes alternative political formations—choose the model of Edward Snowden rather than the congressional representative

Buell 13. John Buell, columnist for The Progressive Populist, adjunct professor at Cochise College, “Nationalism, Tech Giants, and Spy States,” The Contemporary Condition August 10, 2013 <http://contemporarycondition.blogspot.com/2013/08/nationalism-tech-giants-and-spy-states.html> accessed September 4, 2013

That's is one reason it is hard today to remain aloof from politics. But for those who seek to do so the message is just as clear. If the Internet has progressive possibilities, their realization will not be automatic. Today a countersubversive culture nurtures and is nurtured by an evolving alliance of high tech giants, government bureaucrats (whom Smith calls securecrats), the older more established military industrial complex and powerful private corporations that benefit from close ties to the state, including especially the oil  and investment banking community.

If the most repressive outcomes are to be avoided, the best course might be an evolving counter-coalition that would emerge from moral and historical critiques of and alternative to the countersubversive tradition. In Emergency Politics, Honig argues that the very focus on the question of the rules that should govern declarations of emergency and the protections that can be revoked in emergencies reinforce a notion of sovereignty as unitary and top down. Thus they "marginalize forms of popular sovereignty in which action in concert rather than institutional governance is the mark of democratic power and legitimacy." Unitary and decisive sovereignty committed to its own invulnerability is "most likely to perceive crisis where there may only be political conflict and to respond...with antipolitical measures."

The best answer lies not merely in challenging the constitutional status of this surveillance state but in building a political coalition that embodies the forms of popular sovereignty of which Honig speaks. This would include labor, consumer and environmentalist critiques of and alternatives to the role of the state and markets in fostering inequality. It would be attentive to the possibilities and risks of the social media and the limits of its own interventions in these.  The coalition might advance more democratic forms of enterprise and media as well as decentralized and more sustainable forms of energy production and transportation.  And in an era where hyper nationalism erodes so many democratic impulses, cross border initiatives in the interest of widespread access to an open Internet with robust privacy protections would be paramount. (Let's hope that) Edward Snowden's travels (in a world dominated by the state passport and surveillance system) helps to highlight the stake citizens of many lands have in a democratic Internet but a more exploratory and democratic polity.

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

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

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

#### The ballot is the choice of Edward Snowden—will your ballot imply complacency or using your situated position to build a network of popular insurrection?

Connolly 13. William Connolly, Krieger-Eisenhower professor of political science at Johns Hopkins, “‘The East’ and Corporate Terrorism,” The Contemporary Condition, July 7, 2013 <http://contemporarycondition.blogspot.com/2013/07/the-east-and-corporate-terrorism.html>, accessed September 4, 2013

Eventually Sarah develops a strategy of public expose and activism that draws some sustenance from her two identities and resists the traps each sets for her. I will let that part unfold when you watch the film. Is it enough?  Probably not. Could more of us participate in such acts to augment the potential they hold? Yes, we could. Many of us are what Michel Foucault called “specific intellectuals”, people with special knowledges and skills because of the work we do in law firms, medical practices, college teaching, blog writing, pharmaceutical companies, intelligence agencies, the media, school boards, churches, geological research, corporate regulatory agencies, and so on, endlessly. Each of us has specific modes of strategic information and critical skill linked to our role assignments. We can expose horrendous practices, as Snowden has done recently. We can also support others who do so as we seek to build a critical assemblage of public insurrection together.

## 1NR

### solvency

**Hilde, 9** - professor at the University of Maryland School of Public Policy where he teaches seminars in ethics and policy and international environmental and development law and politics(Thomas, “Beyond Guantánamo: Restoring U.S. Credibility on Human Rights” )

Preventive Detention (or Administrative Detention) and a National Security Court. Jack Goldsmith and Neal Katyal (the latter who has been appointed Principal Deputy Solicitor General by Pres. Obama) have proposed indefinite “preventive detention” for anyone who can be shown to be a “suspected terrorist.” This system of detention would be, “overseen by a national security court composed of federal judges with life tenure… Such a court would have a number of practical advantages over the current system. It would operate with a Congressionally approved definition of the enemy. It would reduce the burden on ordinary civilian courts. It would handle classified evidence in a sensible way. It would permit the judges to specialize and to assess over time the trustworthiness of the government and defense lawyers who appear regularly before them. Such a court, explicitly sanctioned by Congress, would have greater legitimacy than our current patchwork system, both in the United States and abroad….” They add that, “criminal prosecutions should still take place where they can. But they are not always feasible. Some alleged terrorists have not committed overt crimes and can be tried only on a conspiracy theory that comes close to criminalizing group membership. In addition, the evidence against a particular detainee may be too difficult to present in open civilian court without compromising intelligence sources and methods….”32 Goldsmith and Katyal contend that such a special court would be comparable to bankruptcy or tax courts.

One significant difference from regular federal courts, however, is that a National Security

Court would permit evidence obtained without Miranda warnings (similar to the European Union

idea of a “letter of rights”), by hearsay, and other means normally inadmissible in federal courts.

Goldsmith and Katyal offer that “the standards of proof for evidence collected in Afghanistan

might not meet every jot and tittle of American criminal law.” It is unclear why the objectivity

of criteria for judging veracity ought to be relaxed when the evidence is collected in Afghanistan.

This approach suggests that a National Security Court would have adequate means by which to judge not the actions of detainees, as with regular courts, but the risk of detainees engaging in harmful actions, even absent evidence. Such an approach appears to deny the notion of due process. It is also difficult to see how this approach would not generate the problem it ostensibly seeks to prevent; that is, the creation of enemies through detention policy. A 2008 document signed by 27 legal scholars opposes “any effort to extend the status quo by establishing either (1) a comprehensive system of long-term “preventive” detention without trial for suspected terrorists, or (2) a specialized national security court to make “preventive” detention determinations and ultimately to try terrorism suspects….” For the basic reason that, despite “dressed up procedures, these proposals would make some of the most notorious aspects of the current failed system permanent.” The authors add that perhaps “most fundamental is the fact that the supporters of these proposals typically fail to make clear who should be detained, much less how such individuals, once designated, can prove they are no longer a threat. Without a reasonably precise definition, not only is arbitrary and indefinite detention possible, it is nearly inevitable.”33 Some of the authors, however, conclude that evidence on the part of the government that a detainee has “engaged in belligerent acts or has directly participated in hostilities against the United States” may be the exceptional case justifying “continued detention.”34 Again, however, this distinction remains fluid enough as to be an arbitrary judgment by government officials.

#### The appearance of unfairness turns the entire aff

**Shulman, 9 –** professor of law at Pace University School of LawPace University School of Law (Mark, “National Security Courts: Star Chamber or Specialized Justice?”, ILSA Journal of Int’l & Comparative Law [Vol. 15:2, 1/1)

The seventh and most complicated set of issues arises out of the complex relationship between the Bush Administration’s detention policies and actual national security. The Bush Administration consistently claimed that its policies were correctly designed and properly implemented in order to ensure security. Those detained were the worst of the worst, and their detention was both essential and effective. Conditions were appropriate. Methods of interrogation were both lawful and necessary. Any exceptions were aberrations attributable to a few bad apples. On the other hand, critics argued that the detentions and interrogations were in great part unlawful and that they undermined national security by inflaming tensions and alienating the United States in the world court of public opinion. Most experts who are not currently serving in the Bush Administration conclude that torture does not produce useful information. And while the federal courts have resolved many of the legal questions35 (at least for now), the security question may ultimately prove impossible to resolve. Justice Stewart’s view that public opinion plays a critical role in assessing the legality of national security measures36 can be extended to drawing conclusions about their effectiveness. Indeed, their effectiveness reinforces assessments of their legitimacy. However, Justice Stewart’s concurrence addressed the relatively specific question of prior censorship and writing in 1971; he could not reasonably take into account only the opinion of the American public.37 Today, the United States depends on global good will that in turn rests on its reputation for fairness. To the extent the United States is viewed as responsible for torture and other serious insults inflicted at Abu Ghraib and Guantánamo, it is alienating people and possibly fostering terrorism.38 If this political/strategic conclusion is correct, then the question of whether to create national security courts should be approached with great caution. If they appear unfair—ad hoc, less lawful, discriminatory, or hypocritical— they may diminish America’s soft power.

#### The plan can never ever solve. Ever.

**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**.**

### democracy

#### The combination of unifying forces outweighs, even if one fails

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Some people look to China for economic and strategic interests while others still stick to the US. Since, as a human nature, change is not widely acceptable due to the high level of uncertainty. It is therefore logical to say that most of the regional leaders prefer to see the status quo of security architecture in the Asia Pacific Region in which US is the hub of security provision. But it is impossible to preserve the status quo since China needs to strategically outreach to the wider region in order to get necessary resources especially energy and raw materials to maintain her economic growth in the home country. It is understandable that China needs to have stable high economic growth of about 8 percent GDP growth per year for her own economic and political survival. Widening development gap and employment are the two main issues facing China. Without China, the world will not enjoy peace, stability, and development. China is the locomotive of global and regional economic development and contributes to global and regional peace and stability. It is understandable that China is struggling to break the so-called containment strategy imposed by the US since the post Cold War. Whether this tendency can lead to the greater strategic division is still unknown. Nevertheless, many observers agree that whatever changes may take place, a multi-polar world and multilateralism prevail. The reasons or logics supporting multilateralism are mainly based on the fact that no one country can really address the security issues embedded with international dimension, no one country has the capacity to adapt and adopt to new changes alone, and it needs cooperation and coordination among the nation states and relevant stakeholders including the private sector and civil societies. Large scale interstate war or armed conflict is **unthinkable** in the region due to the high level of interdependency and democratization. It is believed that economic interdependency can reduce conflicts and prevent war. Democracy can lead to more transparency, accountability, and participation that can reduce collective fears and create more confidence and trust among the people in the region. In addition, globalism and regionalism are taking the center stage of national and foreign policy of many governments in the region except North Korea. **The combination** of those elements of peace is necessary for peace and stability in the region and those elements are **present and being improved in this region.**

### legitimacy

#### heg and legitimacy don’t exist—they perpetuate racist violence

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

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

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

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

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

#### Racism is a voting issue

#### Memmi ‘0 (MEMMI Professor Emeritus of Sociology @ Unv. Of Paris Albert-; RACISM, translated by Steve Martinot, pp.163-)SEW

The struggle against racism will be long, difficult, without intermission, without remission, probably never achieved, yet for this very reason, **it is a struggle to be undertaken without surcease and without concessions. One cannot be indulgent toward racism. One cannot even let the monster in the house, especially not in a mask. To give it merely a foothold means to augment the bestial part in us and in other people which is to diminish what is human. To accept the racist universe to the slightest degree is to endorse fear, injustice, and violence. It is to accept the persistence of the dark history in which we still largely live. It is to agree that the outsider will always be a possible victim** (and which [person] man is not [themself] himself an outsider relative to someone else?). **Racism illustrates in sum, the inevitable negativity of the condition of the dominated;** that is it illuminates in a certain sense the entire human condition. **The anti-racist struggle, difficult though it is, and always in question, is nevertheless one of the prologues to the ultimate passage from animality to humanity. In that sense, we cannot fail to rise to the racist challenge. However, it remains true that one’s moral conduct only emerges from a choice: one has to want it. It is a choice among other choices, and always debatable in its foundations and its consequences.** Let us say, broadly speaking, that the choice to conduct oneself morally is the condition for the establishment of a human order for which racism is the very negation. This is almost a redundancy. **One cannot found a moral order, let alone a legislative order, on racism because racism signifies the exclusion of the other and his or her subjection to violence and domination. From an ethical point of view,** if one can deploy a little religious language, **racism is “the truly capital sin.”**fn22 It is not an accident that almost all of humanity’s spiritual traditions counsel respect for the weak, for orphans, widows, or strangers. It is not just a question of theoretical counsel respect for the weak, for orphans, widows or strangers. It is not just a question of theoretical morality and disinterested commandments. Such unanimity in the safeguarding of the other suggests the real utility of such sentiments. **All things considered, we have an interest in banishing injustice, because injustice engenders violence and death. Of course, this is debatable. There are those who think that if one is strong enough, the assault on and oppression of others is permissible. But no one is ever sure of remaining the strongest. One day, perhaps, the roles will be reversed. All unjust society contains within itself the seeds of its own death.** It is probably smarter to treat others with respect so that they treat you with respect. “Recall,” says the bible, “that you were once a stranger in Egypt,” which means both that you ought to respect the stranger because you were a stranger yourself and that you risk becoming once again someday. **It is an ethical and a practical appeal – indeed, it is a contract, however implicit it might be. In short, the refusal of racism is the condition for all theoretical and practical morality. Because, in the end, the ethical choice commands the political choice. A just society must be a society accepted by all. If this contractual principle is not accepted, then only conflict, violence, and destruction will be our lot. If it is accepted, we can hope someday to live in peace. True, it is a wager, but the stakes are irresistible.**