# Round 8—Neg vs Indiana PS

## 1NC

### 1

#### A. Interpretation – Targeted killing requires an identified target and a name on a kill list – Signature strikes, combat operations and covert ops are distinct – the plan is over-inclusive

**Uebersax 12** - psychologist, writer and former RAND Corporation military analyst.
(John, "The Four Kinds of Drone Strikes," [http://satyagraha.wordpress.com/2012/05/23/the-four-kinds-of-drone-strikes/)](http://satyagraha.wordpress.com/2012/05/23/the-four-kinds-of-drone-strikes/%29)

We must begin with clear terms, and that is the purpose of the present article. Drone strikes, that is, the launching of explosive missiles from a remotely operated aerial vehicle, come in four varieties: targeted killings, signature strikes, overt combat operations, and covert combat operations. We shall consider each in turn.

* **Targeted killing**. This occurs when a drone strike is used to kill a terrorist whose identity is known, and whose name has been placed on a hit list, due to being deemed a ‘direct and immediate threat’ to US security. The government would like people to think this means these strikes target a terrorist literally with his or her hand on a detonator. But, in actuality, the only real criterion is that the government believes the target is sufficiently closely affiliated with terrorist organizations (e.g., a propagandist or financier) to justify assassination. This is likely the rarest form of drone strike. However it receives the most publicity, because the government likes to crow when it kills a high-ranking terrorist.
* **Signature strikes**. In signature strikes, the target is a person whose name is not known, but whose actions fit the profile (or ‘signature’) of a high-ranking terrorist. There is some ambiguity concerning the meaning of this term. Some use it in the sense just stated — i.e., a strike against an anonymous terrorist leader. Others use it more broadly to include killing of any non-identified militants, whether high-ranking or not. However from the moral standpoint it makes a major difference whether an anonymous targeted victim is a high-level leader, or simply an anonymous combatant. For this reason it is advantageous to restrict the term “signature strike” to the targeting of anonymous high-level leaders, and to assign strikes against anonymous non-leaders to the two further categories below.
* **Overt combat operation**. This category includes drone strikes conducted as part of regular military operations. These strikes are presumably run by uniformed military personnel according to codes of military conduct, and are, logically and legally, not much different from ordinary air or artillery strikes. As a part of routine warfare, such strikes are subject to the provisions of the Geneva Conventions. Three items of the Geneva Conventions are of special interest here: (1) strikes should occur only in the context of a legally declared war; (2) they should be conducted by lawful combatants (which, many experts believe, excludes use of non-uniformed, civilian contractor operators); and (3) standard provisions concerning the need to report casualties, especially civilian casualties, are in effect.
* **Covert combat operation**. Finally, there are covert combat operations. These, like the former category, are launched against usual military targets – e.g., any hostile militant, not just high-ranking ones. But why should these strikes be covert? The obvious answer is: to mask something shady. Covert combat strikes can evade all those irritating constraints on military tactics imposed by the Geneva Conventions, International Law, public opinion, and basic human decency.

#### Voting issue for Limits – They expand the topic to include anything the U.S. does with drones or any form of killing – This devastates limits

**Silva 3** (Sebastian Jose Silva, Faculte de Droit de l'Universite de Montreal, “Death For Life: A Study of Targeted Killing by States In International Law,” August 2003)

As defined by Steven R. David, targeted killing is the "**intentional slaying** of a specific individual or group of individuals undertaken with explicit **governmental approval**.,,25 Though concise, the problem with this definition is that it **fails to specify the intended targets** and **ignores the context** in which they are carried out. By failing to define targeted killings as measures of counter-terrorism, killings of all types may indiscriminately fall under its mantle with devastating consequences. As such, the killing of political leaders in peacetime, which amounts to assassination, can fall within its scope. The same can be said about the killing of specific enemy combatants in armed conflict, which amounts to targeted military strikes, and the intentional slaying of common criminals, dissidents, or opposition leaders. Actions carried-out by governments within their jurisdictions can also be interpreted as targeted killings. Although the killing of terrorists abroad may constitute lawful and proportionate self-defense in response to armed attacks, the use of such measures by states for an unspecified number of reasons renders shady their very suggestion. David's definition is essentially correct but over-inclusive.

### 2

#### The 1ac is stuck in the juridical matrix, viewing war powers as legally possessed, masking that power itself determines the discursive stage upon which their advocacy plays out—break open the juridical discussion of war powers.

Salter 85. M.G. Salter, lecturer in criminal law at the University of Birmingham, “The Rule of Power in the Language of Law,” The Liverpool Law Review Vol.VII(1) [1985] pg. 45

Through this linguistic patterning of administered time, the student is kept under the continual assessment of normalising judgments that examine, compare and contrast in order to accumulate a knowledge. Even the measurers are themselves externally measured, graded and assessed. Between staff, considerations of tactics determine aspects of discourse. Rarely is complete openness and honesty strategic.

Power also operates through legal discourse to assemble specific relations between people through individualising and collectivising them into pre-given categories. We can see this within the landlord tenant relationship. Even in their legal battles and formal agreements the relations between landlords and tenants are pre-determined through such notions as property, ownership and possessory rights. These shape the formation of intentions and the consequences of action. Legal battles for "student rights", "tenants rights" or those for blacks, consumers and women, take place upon a language already worked by power and for which the determination of what "tenancy'~ "rights" etc.~ means has already happened.

It is therefore inadequate to see these effects of power as mere rituals without penetrating deeper into the rules of operation that make possible and govern such elements of discourse. These rules set up an order of succession between different speakers' contributions, they determine who has the right to follow whom~ to interrupt, overrule~ qualify remarks~ re-interpret in "the light of broader policy considerations" and which positions may be taken upon what has been said by previous speakers and the status of statements made. Power also determines the effect of these modifications upon the subsequent authority of the overruled speaker.

Not only is the "who" prescribed in advance, but the "how" of these overrulings, qualifications, re-interpretations etc. If a statement by the Attorney-General over the use of the Emergency Powers legislation during violent strikes and unlawful picketing is subsequently to be qualified, this cannot be done in just any fashion. Power thus enforces what it has already established as the "proper" manner of any qualification. This has already pre-defined what specific element can~ in that particular qualifying discourse~ be related to what other~ if it is to count as a successful use of a particular ritualised tactic. Breach of these rules established under certain laws of co,possibility leads not to a successful "qualification" of the Attorney-General's earlier statement~ but to something else -perhaps an unintended public humiliation of a senior member of government.

In our academic discourse the power of the legal professions to impose a particular form and content for "their" qualification has already structured the occasion of any possible discourse. Both inside and outside academia power has already declared which qualified person, occupying which certified occupation for how many years can give an authoritative rendition of any particular law. (8) Also it pre-determines from what place this must be offered and according to which rituals of circumstance - accompanying gestures, style and body positions - to maintain the authority of the speaker. (9)

A law of compossibility has then laid down rules whose historical interplay determine why the appearance and disappearance of a particular discourse could not have occurred otherwise. The effects of their operation is to assemble and hold together not only a particular legal theme, but also a group of subjects whose status empowers them to speak and command an audience upon this theme. For example, the legality of bail conditions imposed upon pickets is not a theme for anyone at any time or place. Whether student, lecturer, defence lawyer, trade union leader or picket, mastery of these rules by the subject they create within the field they open up is a pre-condition for successful practical action within it. This is certainly true when the sites are the adversarial, and therefore highly tactical, atmospheres of court rooms, television debates or picket lines.

Such mastery and command does not make a person master of the rules themselves. It is still power that is heard when language speaks; they are no-onets personal possession or plaything. They are outcomes of chosen practices they themselves have made possible. It does not then appear to be a question of a "ruling class" which owns and therefore has certain power at its free disposal consciously to secure its rule over a dominated class. If anything the relationship is that power rules through establishing the meaning of particular social relationships. One has power like one has a cold, i.e. we are had by it and must make the best of it, develop resistance, fight the symptoms that aggravate us, discover, understand and use its effects to our advantage. No-one is exempt. The unfinished rituals power establishes generate our legal and ethical codes as well as the social relationships of their field of application. These relationships themselves create potentially violent tensions whose threat and reality support the widely felt need for such codes and law.

Power operates as much through the understanding as the speaking of legal discourse. Thus even the individual's understanding of law is made to "run on time" according to preset and administered rhythms. The intelligibility of laws governing, say, official secrets and labour relations, are constantly established through what is written and said in and about them. This constituted intelligibility is not in itself dependent upon administrative and labour practices. Instead, the dependency of its theme is articulated through language which makes constant but selective use of these relations. It does so in order to lay down a way in which these relations can be authoritatively addressed through it. As a lawyer I should be able to understand these laws better than those to whom they directly apply. Of course, it is a different matter to consider what this established intelligibility then means for administrators and trade unionists.

Power therefore delimits and holds together a select audience for particular legal discourses. The authoritative legal version which I may attempt to render is cornered by a particular profession and expressed upon non-legal and external practices such as journalism~ trade unionism, policing, law courts and prisons. From such constituted/constituting sources legal discourse has inscribed upon it~ and inserted within it~ an implicit philosophy of life, system of ethics and criteria for "sound judgement". These are not essentially or exclusively legal in character, but are bound up with the evolution of modernist societies and their struggles with unaccountable feudal and royal power. For example, the struggle for the rule of law has always been a power-struggle between competing potential law makers, for access to and control over law making machinery and then for the gaining of universal social recognition of the laws that have been made. There can also be a struggle within academia between and among students and lecturers over the weight given to purely academic matters, research, professional training etc., that occur against external government financial and relevancy criteria.

#### Framing targeted killing as a juridical problem misunderstands agency and conflates the law and politics—the correct response cannot be to respond to legal discourse, but to disrupt it

Krasmann 12. Susanne Krasmann, prof. Dr, Institute for Criminological Research, University of Hamburg, “Targeted Killing and Its Law: On a Mutually Constitutive Relationship,” Leiden Journal of International Law (2012), 25, pg. 678

The legal debate on targeted killing, particularly that referring to the US practice, has increased immensely during the last decade and even more so very recently, obviously due to a ‘compulsion of legality’.87 Once this state practice of resorting to the use of lethal force has been recognized as systematically taking place, it needs to be dealt with in legal terms. Whether this is done in supportive or critical terms, the assertion of targeted killing as a legal practice commences at this point. This is due to the fact that the law, once invoked, launches its own claims.

To insist on disclosing ‘the full legal basis for targeted killings’; on criteria, legal procedures, and ‘access to reliable information’ in order to render governmental action controllable; or on legal principles to be applied in order to estimate the necessity and proportionality of a concrete intervention at stake,88 not only involves accepting targeted killing as a legitimate subject of debate in the first place. It requires distinctions to be made between, for example, a legitimate and an illegitimate target. It invokes the production of knowledge and the establishment of pertinent rules. Indeterminate categories are to be determined and thus established as a new reading of positive law. The introduction of international human rights standards into the debate, for example, clearly allows limits to be set in employing the pre-emptive tactic. As Wouter Werner has shown with regard to the Israeli High Court of Justice’s decision on the legality of targeted killing operations,89 this may well lead, for example, to recognizing the enemy as being not ‘outlaws’ but, instead, combatants who are to be granted basic human rights. Subsequently, procedural rules may be established that restrict the practice and provide criteria for assessing the legality of concrete operations.90 At the same time, however, targeted killing is recognized as a legitimate tactic in the fight against terrorism and is being determined and implemented legally.91

When framed within the ‘theatre of war’, targeted killing categorically seems to be justifiable under the legal principles of necessity, proportionality, discrimination, and the avoidance of unnecessary suffering. This is true as long as one presupposes in general terms, as the juridical discourse usually does, both a well-considered pro- ceeding along those principles92 and, accordingly, that targeted killing, by its very nature, is a ‘calculated, precise use of lethal force’.93 Procedural rules, like the ‘pro- portionality test’, that are essentially concerned with determination, namely with specifying criteria of intervention for the concrete case or constellation, certainly provide reliability by systematically inciting and provoking justifications. Their application therefore, we may say, contributes to clarifying a controversial norm- ative interpretation, but it will never predict or determine how deliberation and justification translate into operational action. The application of procedural rules does not only notoriously remain ‘indeterminate’,94 but also produces its own truth effects. The question of proportionality, for example, is intrinsically a relational one. The damage that targeting causes is to be related to the anticipated military ad- vantage and to the expected casualties of non-targeted operations. Even if there are ‘substantial grounds to believe’ that such an operation will ‘encounter significant armed resistance’,95 this is a presumption that, above all, entails a virtual dimension: the alternate option will never be realized. According to a Foucauldian perspective, decisions always articulate within an epistemic regime and thus ‘eventualize’ on the political stage.96 There is, in this sense, no mere decision and no mere meaning; and, conversely, there is no content of a norm, and no norm, independent of its enforcement.97 To relate this observation to our problem at hand means that, rather than the legal principles’ guiding a decision, it is the decision on how to proceed that constitutes the meaning of the legal principle in question. The legal reasoning, in turn, produces a normative reality of its own, as we are now able to imagine, comprehend, and assess a procedure and couch it in legal terms.

This is also noticeable in the case of the Osama bin Laden killing. As regards the initial strategy of justification, the question of resistance typically is difficult to establish ex post in legal terms. Such situations are fraught with so many possible instances of ambiguous behaviour and risk, and the identification of actual behav- iour as probably dangerous and suspicious may change the whole outcome of the event.98 But, once the public found itself with little alternative but to assume that the prospect of capturing the subject formed part of the initial order, it also had to assume that the intention was to use lethal force as a last resort. And, once the public accepts the general presumption that the United States is at war with the terrorist organization, legal reasoning about the operation itself follows and constitutes a rationale shaping the perception of similar future actions and the exercise of governmental force in general.99 Part of this rationale is the assumption, as the president immediately pointed out in his speech, that the threat of al Qaeda has not been extinguished with bin Laden. The identification of a threat that emanates from a network may give rise to the question of whether the killing of one particular target, forming part of a Hydra, makes any sense at all.100 Yet, it equally nourishes the idea that the fight against terrorism, precisely because of its elusiveness, is an enduring one, which is exactly the position the United States takes while considering itself in an armed conflict with the terrorist organization. Targeting and destroying parts of a network, then, do not destroy the entire network, but rather verify that it exists and is at work. The target, in this sense, is constituted by being targeted.101 Within the rationale of the security dispositif, there continue to be threats and new targets. Hence, at work is a transformation of laws through practice, rather than their amendment.

Giorgio Agamben maintains that a legal norm, because abstract, does not stipulate its application.102 ‘Just as between language and world . . . there is no internal nexus’ between them. The norm, in this sense, exists independent of ‘reality’. This, according to Agamben, allows for the norm in the ‘state of exception’ both to be applied with the effect of ‘ceasing to apply’103 – ‘the rule, suspending itself, gives rise to the exception’104 – and to be suspended without being abolished. Although forming part of and, in fact, being the effect of applying the law, the state of exception, in Agamben’s view, disconnects from the norm. Within a perspective on law as practice, by contrast, there is no such difference between norm and reality. Even to ignore a pertinent norm constitutes an act that has a meaning, namely that the norm is not being enforced. It affects the norm. Targeted killing operations, in this sense, can never be extra-legal.105 On the contrary, provided that illegal practices come up systematically, they eventually will effectuate the transformation of the law. Equally, the exception from the norm not only suspends the norm, transforming it, momentarily or permanently, into a mere symbol without meaning and force, but at the same time also impinges upon the validity of that norm. Moreover, focus on the exception within the present context falls short of capturing a rather gradual transitional process that both resists a binary deciphering of either legal or illegal and is not a matter of suspending a norm. As practices deploying particular forms of knowledge, targeted killing and its law mutually constitute each other, thus re-enforcing a new security dispositif. The appropriate research question therefore is how positive law changes its framework of reference. Targeted killing, once perceived as illegal, now appears to be a legal practice on the grounds of a new understanding of international law’s own elementary concepts. The crux of the ‘compulsion of legality’ is that legality itself is a shifting reference.

Seen this way, the United States does not establish targeted killing as a legal practice on the grounds of its internationally ‘possessing’ exceptional power. Rather the reverse; it is able to employ targeted killing as a military tactic, precisely because this is accepted by the legal discourse. As a practice, targeted killing, in turn, reshapes our understanding of basic concepts of international law. Any dissenting voice will now be heard with more difficulty, since targeted killing is a no longer an isolated practice but, within the now establishing security dispositif, appears to be appropriate and rational. To counter the legal discourse, then, would require to interrupt it, rather than to respond to it, and to move on to its political implications that are rather tacitly involved in the talk about threats and security, and in the dispute about targeted killing operations’ legality.

#### The juridical matrix is a racist project to force the entire earth under the aegis of liberal control or else—wars are waged not in the name of a sovereign’s juridical power, but on behalf of the global liberal body itself

Evans 10. Brad Evans, Lecturer in the School of Politics and International Studies at the University of Leeds and Programme Director for International Relations, “Foucault’s Legacy: Security, War, and Violence in the 21st Century,” Security Dialogue vol.41, no. 4, August 2010, pg. 422-424, sage

Imposing liberalism has often come at a price. That price has tended to be a continuous recourse to war. While the militarism associated with liberal internationalization has already received scholarly attention (Howard, 2008), Foucault was concerned more with the continuation of war once peace has been declared.4 Denouncing the illusion that ‘we are living in a world in which order and peace have been restored’ (Foucault, 2003: 53), he set out to disrupt the neat distinctions between times of war/military exceptionalism and times of peace/civic normality. War accordingly now appears to condition the type of peace that follows. None have been more ambitious in map-­ ping out this war–peace continuum than Michael Dillon & Julian Reid (2009). Their ‘liberal war’ thesis provides a provocative insight into the lethality of making live. Liberalism today, they argue, is underwritten by the unreserved righteousness of its mission. Hence, while there may still be populations that exist beyond the liberal pale, it is now taken that they should be included. With ‘liberal peace’ therefore predicated on the pacification/elimination of all forms of political difference in order that liberalism might meet its own moral and political objectives, the more peace is commanded, the more war is declared in order to achieve it: ‘In proclaiming peace . . . liberals are nonethe-­ less committed also to making war.’ This is the ‘martial face of liberal power’ that, contrary to the familiar narrative, is ‘directly fuelled by the universal and pacific ambitions for which liberalism is to be admired’ (Dillon & Reid, 2009: 2). Liberalism thus stands accused here of universalizing war in its pursuit of peace: However much liberalism abjures war, indeed finds the instrumental use of war, espe-­ cially, a scandal, war has always been as instrumental to liberal as to geopolitical thinkers. In that very attempt to instrumentalize, indeed universalize, war in the pursuit of its own global project of emancipation, the practice of liberal rule itself becomes profoundly shaped by war. However much it may proclaim liberal peace and freedom, its own allied commitment to war subverts the very peace and freedoms it proclaims (Dillon & Reid, 2009: 7). While Dillon & Reid’s thesis only makes veiled reference to the onto-­ theological dimension, they are fully aware that its rule depends upon a certain religiosity in the sense that war has now been turned into a veritable human crusade with only two possible outcomes: ‘endless war or the transformation of other societies and cultures into liberal societies and cul-­ tures’ (Dillon & Reid, 2009: 5). Endless war is underwritten here by a new set of problems. Unlike Clausewitzean confrontations, which at least pro-­ vided the strategic comforts of clear demarcations (them/us, war/peace, citizen/soldier, and so on), these wars no longer benefit from the possibility of scoring outright victory, retreating, or achieving a lasting negotiated peace by means of political compromise. Indeed, deprived of the prospect of defin-­ ing enmity in advance, war itself becomes just as complex, dynamic, adaptive and radically interconnected as the world of which it is part. That is why ‘any such war to end war becomes a war without end. . . . The project of removing war from the life of the species becomes a lethal and, in principle, continuous and unending process’ (Dillon & Reid, 2009: 32). Duffield, building on from these concerns, takes this unending scenario a stage further to suggest that since wars for humanity are inextricably bound to the global life-­chance divide, it is now possible to write of a ‘Global Civil War’ into which all life is openly recruited: Each crisis of global circulation . . . marks out a terrain of global civil war, or rather a tableau of wars, which is fought on and between the modalities of life itself. . . . What is at stake in this war is the West’s ability to contain and manage international poverty while maintaining the ability of mass society to live and consume beyond its means (Duffield, 2008: 162). Setting out civil war in these terms inevitably marks an important depar-­ ture. Not only does it illustrate how liberalism gains its mastery by posing fundamental questions of life and death – that is, who is to live and who can be killed – disrupting the narrative that ordinarily takes sovereignty to be the point of theoretical departure, civil war now appears to be driven by a globally ambitious biopolitical imperative (see below). Liberals have continuously made reference to humanity in order to justify their use of military force (Ignatieff, 2003). War, if there is to be one, must be for the unification of the species. This humanitarian caveat is by no means out of favour. More recently it underwrites the strategic rethink in contemporary zones of occupation, which has become biopolitical (‘hearts and minds’) in everything but name (Kilcullen, 2009; Smith, 2006). While criticisms of these strategies have tended to focus on the naive dangers associated with liberal idealism (see Gray, 2008), insufficient attention has been paid to the contested nature of all the tactics deployed in the will to govern illiberal populations. Foucault returns here with renewed vigour. He understood that forms of war have always been aligned with forms of life. Liberal wars are no exception. Fought in the name of endangered humanity, humanity itself finds its most meaningful expression through the battles waged in its name: At this point we can invert Clausewitz’s proposition and say that politics is the continuation of war by other means. . . . While it is true that political power puts an end to war and establishes or attempts to establish the reign of peace in civil society, it certainly does not do so in order to suspend the effects of power or to neutralize the disequilibrium revealed in the last battle of war (Foucault, 2003: 15). What in other words occurs beneath the semblance of peace is far from politically settled: political struggles, these clashes over and with power, these modifications of relations of force – the shifting balances, the reversals – in a political system, all these things must be interpreted as a continuation of war. And they are interpreted as so many episodes, fragmentations, and displacements of the war itself. We are always writing the history of the same war, even when we are writing the history of peace and its institutions (Foucault, 2003: 15). David Miliband (2009), without perhaps knowing the full political and philo-­ sophical implications, appears to subscribe to the value of this approach, albeit for an altogether more committed deployment: NATO was born in the shadow of the Cold War, but we have all had to change our thinking as our troops confront insurgents rather than military machines like our own. The mental models of 20th century mass warfare are not fit for 21st century counter-­ insurgency. That is why my argument today has been about the centrality of politics. People like quoting Clausewitz that warfare is the continuation of politics by other means. . . . We need politics to become the continuation of warfare by other means. Miliband’s ‘Foucauldian moment’ should not escape us. Inverting Clausewitz on a planetary scale – hence promoting the collapse of all meaningful distinctions that once held together the fixed terms of Newtonian space (i.e. inside/outside, friend/enemy, citizen/soldier, war/peace, and so forth), he firmly locates the conflict among the world of peoples. With global war there-­ fore appearing to be an internal state of affairs, vanquishing enemies can no longer be sanctioned for the mere defence of things. A new moment has arrived, in which the destiny of humanity as a whole is being wagered on the success of humanity’s own political strategies. No coincidence, then, that authors like David Kilcullen – a key architect in the formulation of counter-­ insurgency strategies in Iraq and Afghanistan, argue for a global insurgency paradigm without too much controversy. Viewed from the perspective of power, global insurgency is after all nothing more than the advent of a global civil war fought for the biopolitical spoils of life. Giving primacy to counter-­ insurgency, it foregrounds the problem of populations so that questions of security governance (i.e. population regulation) become central to the war effort (RAND, 2008). Placing the managed recovery of maladjusted life into the heart of military strategies, it insists upon a joined-­up response in which sovereign/militaristic forms of ordering are matched by biopolitical/devel-­ opmental forms of progress (Bell & Evans, forthcoming). Demanding in other words a planetary outlook, it collapses the local into the global so that life’s radical interconnectivity implies that absolutely nothing can be left to chance. While liberals have therefore been at pains to offer a more humane recovery to the overt failures of military excess in current theatres of operation, warfare has not in any way been removed from the species. Instead, humanized in the name of local sensitivities, doing what is necessary out of global spe-­ cies necessity now implies that war effectively takes place by every means. Our understanding of civil war is invariably recast. Sovereignty has been the traditional starting point for any discussion of civil war. While this is a well-established Eurocentric narrative, colonized peoples have never fully accepted the inevitability of the transfixed utopian prolificacy upon which sovereign power increasingly became dependent. Neither have they been completely passive when confronted by colonialism’s own brand of warfare by other means. Foucault was well aware of this his-­ tory. While Foucauldian scholars can therefore rightly argue that alternative histories of the subjugated alone permit us to challenge the monopolization of political terms – not least ‘civil war’ – for Foucault in particular there was something altogether more important at stake: there is no obligation whatsoever to ensure that reality matches some canonical theory. Despite what some scholars may insist, politically speaking there is nothing that is necessarily proper to the sovereign method. It holds no distinct privilege. Our task is to use theory to help make sense of reality, not vice versa. While there is not the space here to engage fully with the implications of our global civil war paradigm, it should be pointed out that since its biopolitical imperative removes the inevitability of epiphenomenal tensions, nothing and nobody is necessarily dangerous simply because location dictates. With enmity instead depending upon the complex, adaptive, dynamic account of life itself, what becomes dangerous emerges from within the liberal imaginary of threat. Violence accordingly can only be sanctioned against those newly appointed enemies of humanity – a phrase that, immeasurably greater than any juridical category, necessarily affords enmity an internal quality inherent to the species complete, for the sake of planetary survival. Vital in other words to all human existence, doing what is necessary out of global species necessity requires a new moral assay of life that, pitting the universal against the particular, willingly commits vio-­ lence against any ontological commitment to political difference, even though universality itself is a shallow disguise for the practice of destroying political adversaries through the contingency of particular encounters. Necessary Violence Having established that the principal task set for biopolitical practitioners is to sort and adjudicate between the species, modern societies reveal a distinct biopolitical aporia (an irresolvable political dilemma) in the sense that making life live – selecting out those ways of life that are fittest by design – inevitably writes into that very script those lives that are retarded, backward, degener-­ ate, wasteful and ultimately dangerous to the social order (Bauman, 1991). Racism thus appears here to be a thoroughly modern phenomenon (Deleuze & Guattari, 2002). This takes us to the heart of our concern with biopoliti-­ cal rationalities. When ‘life itself’ becomes the principal referent for political struggles, **power necessarily concerns itself with those biological threats to human existence** (Palladino, 2008). That is to say, since life becomes the author of its own (un)making, the biopolitical assay of life necessarily portrays a commitment to the supremacy of certain species types: ‘a race that is portrayed as the one true race, the race that holds power and is entitled to define the norm, and against those who deviate from that norm, against those who pose a threat to the biological heritage’ (Foucault, 2003: 61). Evidently, what is at stake here is no mere sovereign affair. Epiphenomenal tensions aside, racial problems occupy a ‘permanent presence’ within the political order (Foucault, 2003: 62). Biopolitically speaking, then, since it is precisely through the internalization of threat – the constitution of the threat that is now from the dangerous ‘Others’ that exist within – that societies reproduce at the level of life the ontological commitment to secure the subject, since everybody is now possibly dangerous and nobody can be exempt, for politi-­ cal modernity to function one always has to be capable of killing in order to go on living: Wars are no longer waged in the name of a sovereign who must be defended; they are waged on behalf of the existence of everyone; entire populations are mobilized for the purpose of wholesale slaughter in the name of life necessity; massacres have become vital. . . . The principle underlying the tactics of battle – that one has to become capable of killing in order to go on living – has become the principle that defines the strategy of states (Foucault, 1990: 137). When Foucault refers to ‘killing’, he is not simply referring to the vicious act of taking another life: ‘When I say “killing”, I obviously do not mean simply murder as such, but also every form of indirect murder: the fact of exposing someone to death, increasing the risk of death for some people, or, quite simply, political death, expulsion, rejection and so on’ (Foucault, 2003: 256). Racism makes this process of elimination possible**,** for it is only through the discourse and practice of racial (dis)qualification that one is capable of introducing ‘a break in the domain of life that is under power’s control: the break between what must live and what must die’ (Foucault, 2003: 255). While kill- ing does not need to be physically murderous, that is not to suggest that we should lose sight of the very real forms of political violence that do take place in the name of species improvement. As Deleuze (1999: 76) duly noted, when notions of security are invoked in order to preserve the destiny of a species, when the defence of society gives sanction to very real acts of violence that are justified in terms of species necessity, that is when the capacity to legitimate murderous political actions in all our names and for all our sakes becomes altogether more rational, calculated, utilitarian, hence altogether more frightening: When a diagram of power abandons the model of sovereignty in favour of a disciplinary model, when it becomes the ‘bio-­power’ or ‘bio-­politics’ of populations, controlling and administering life, it is indeed life that emerges as the new object of power. At that point law increasingly renounces that symbol of sovereign privilege, the right to put someone to death, but allows itself to produce all the more hecatombs and genocides: not by returning to the old law of killing, but on the contrary in the name of race, precious space, conditions of life and the survival of a population that believes itself to be better than its enemy, which it now treats not as the juridical enemy of the old sovereign but as a toxic or infectious agent, a sort of ‘biological danger’.Auschwitz arguably represents the most grotesque, shameful and hence meaningful example of necessary killing – the violence that is sanctioned in the name of species necessity (see Agamben, 1995, 2005). Indeed, for Agamben, since one of the most ‘essential characteristics’ of modern biopolitics is to con-­ stantly ‘redefine the threshold in life that distinguishes and separates what is inside from what is outside’, it is within those sites that ‘eliminate radically the people that are excluded’ that the biopolitical racial imperative is exposed in its most brutal form (Agamben, 1995: 171). The camp can therefore be seen to be the defining paradigm of the modern insomuch as it is a ‘space in which power confronts nothing other than pure biological life without any media-­ tion’ (Agamben, 1995: 179). While lacking Agamben’s intellectual sophistry, such a Schmittean-­inspired approach to violence – that is, sovereignty as the ability to declare a state of juridical exception – has certainly gained wide-­ spread academic currency in recent times. The field of international rela-­ tions, for instance, has been awash with works that have tried to theorize the ‘exceptional times’ in which we live (see, in particular, Devetak, 2007; Kaldor, 2007). While some of the tactics deployed in the ‘Global War on Terror’ have undoubtedly lent credibility to these approaches, in terms of understanding violence they are limited. Violence is only rendered problematic here when it is associated with some act of unmitigated geopolitical excess (e.g. the inva-­ sion of Iraq, Guantánamo Bay, use of torture, and so forth). This is unfortunate. Precluding any critical evaluation of the contemporary forms of violence that take place within the remit of humanitarian discourses and practices, there is a categorical failure to address how necessary violence continues to be an essential feature of the liberal encounter. Hence, with post-interventionary forms of violence no longer appearing to be any cause for concern, the nature of the racial imperative that underwrites the violence of contemporary liberal occupations is removed from the analytical arena.

#### The alternative is to reject the affirmative for their complicity with the juridical matrix. The 1nc’s speaking truth to power, an irruption of established discourse that allows alternatives to bubble to the surface and demonstrates that the emperor has no cloths

Simpson 12. Zachary Simpson, professor of philosophy at the University of Arts and Sciences of Oklahoma, Foucault Studies, No. 13, May 2012, pg. 107

The parallels between Foucault’s conception of his own historical-critical method—“fic- tioning”—and the temporalizing aspects of parrhesia, are brought into critical relief in the opening sections on parrhesia in his 1983 Collège de France lectures. There, he draws a con- trast between a performative utterance, which is “such that when the utterance is made, the effect which follows is known and ordered in advance,” and parrhesia, in which “the irruption of the true discourse determines an open situation, or rather opens the situation and makes possible effects which are, precisely, not known. Parrhesia does not produce a codified effect; it opens up an unspecified risk.”37 Anticipating the later work of Alain Badiou, who identifies being with that which is in the realm of the known and knowable—therefore in the realm of the “performative” for Foucault—and the event as that which is unpredictable, Foucault clearly identifies parrhesia as an “irruptive event” which “creates a fracture and opens up a risk.”38 Parrhesia, in this way, announces those truths which radically alter the present state of affairs by transforming the way in which being itself is interpreted.39 For those involved in the parrhesiastic game, parrhesia represents a way of rupturing conventional logic and opening up a new field of relations in which both parrhesiast and listener may begin to operate. Like fiction, parrhesia allows an interference with the present that discloses unthought-of possibilities in the future.

Foucault’s contrast between the performative utterance and parrhesia also clarifies what parrhesia does not do: represent a present political or social state of affairs as it is. Stated posi- tively, this means that parrhesia is not only the constitution of an event within discourse, it is also politically subversive. As Prado notes, what is “most noteworthy about experiential truth is that it opposes power-produced truth.”40 In Foucault’s middle writings and interviews, this subversive function is given over to critique, genealogical analysis, and the role of the author. As Foucault avers in an interview, “Critique doesn’t have to be the premise of a deduction that concludes, ‘this, then, is what needs to be done.’ It should be an instrument for those who fight, those who resist and refuse what is... It is a challenge directed to what is.”41 This more subversive function of critical and oppositional discourse is transferred in the later writings to parrhesia itself, where “the function of parrhesia is precisely to be able to limit the power of the masters.”42 This dimension of parrhesia is most evident in Foucault’s extended examination of the confrontation between Plato and Dionysius, where Plato—seen as the true parrhesiast— engages the ignorance and tyranny of Dionysius himself. In reflection, Foucault notes that “this is an exemplary scene of parrhesia: a man stands up to a tyrant and tells him the truth.”43 What distinguishes Plato in this instance is not only his role as philosopher and truth-teller, but also his position within the discourse: Plato’s speech is all the more remarkable given its subversive nature with respect to power and, hence, its subsequent risk.

### secrecy

#### Utilizing the state to combat social wrongs expresses a desire for mastery that reinforces state power – turns the aff

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(Elisabeth, “Heroic Identifications: Or, ‘You Can Love Me Too – I am so Like the State’”, Theory & Event Vol 15, Issue 1 2012, dml)

The post-9/11 desire for mastery derives from the juxtaposition between a desire for freedom and generalized conditions of political powerlessness in contemporary life. It stems from the ways in which formally free individuals are not only materially constrained by multiple and interweaving modes of social power, but are shaped by contemporary global crises such as empire, occupation, and imperialism across broad international populations; from the broadening control of the state and economy over aspects of social life previously ascribed to the “private” realm, such as education, child-rearing, and welfare; from neoliberal capital, terrorism, ethnic wars, racism, sexism, entrenched and broadening levels of poverty, environmental destruction, security privatization, and resource scarcity. Under these conditions, citizens are **excluded from national politics** and made into consumers **rather than active players** in the operations of collective decision-making; multinational corporate powers promote vast levels of exploitation while evading accountability and visibility; jobs and families are uprooted, severed, and micromanaged as a politics of fear pervades work and home life; systems of support from state, family, and community structures are financially broken and systematically destroyed; the nexus of capitalism and state governance pushes the goals of efficiency, subjugation, and flexibility to organize the terms of collective governance and individual citizenship at the expense of notions of justice, freedom, or the good; mediated information exposes various horrors and subjugations from around the world, yet at the same time insists that nothing can be done to change them; no viable political collectivity offers significant societal-wide change, as significant change does not seem probable. Under these conditions, individuals seem **unable to experience freedom or effect change in the world**. They are conditioned by the impinging effects of global capital and global interdependence, as well as **the inability to master or singularly control the powers that generate them**. Affecting individuals to significantly varying degrees depending upon their locations within structures of power and privilege, these conditions also shape ordinary and lived experiences of powerlessness across populations. Experiences of powerlessness are not only frightening but also confusing, as their causes are often difficult to discern. The modes of power that produce them are often nonagentic and spatially unlocatable – global yet micropolitical, impinging yet intangible, faceless yet moving, and replicating with alacrity. They create a widespread and constant sense of precariousness and constraint that is not so much explicitly expressed as experienced as nagging, unarticulated affects of impotence, anxiety, constriction, and anger. Identification with the state aims to address these experiences **by heroically overcoming them**. Identification with state action is also, in part, an effect of a specific type of liberal individualism that valorizes **expectations of mastery over and autonomy from the social world**. American political subjects, often shaped by individualism’s expectations of individual sovereignty and self-determinism, struggle with the continual process of power’s regulatory capacity as well as lived experiences of dependence. Both demonstrate their failure to live up to individualism’s ideal image: to be, in Etienne Balibar’s words, the “subject without subjection,” to be self-reliant, to master power, to pull oneself up by one’s bootstraps, to actively and unilaterally determine the course of one’s existence.13 Awash in the tenets of liberal individualism, freedom here means **autonomy from others and from power**, and is experienced through a type of self-determinism that implies the capacity to control historical and political uncertainty. It is understood to be both the lived experience of mastery and the absence of power over the self. Interdependence **of any sort** is considered unfreedom, so that freedom is sustained through **an aggressive stance toward other individuals**, nations, and even nature.14 To subjects who want yet are unable to live up to this model of agency, bold and unilateral state actions can seem to be one place where **a strong autonomy is still possible**. State action seems to harbor the possibility of unrestrained power over the contingencies of the world, where the ability to control others and the world still gains credence.

#### Their use of the state guarantees mass violence and destroys value to life

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One of the deadliest practices we engage in is that of identifying ourselves with a collective entity. Whether it be the state, a nationality, our race or gender, or any other abstraction, we introduce division – hence, conflict – into our lives as we separate ourselves from those who identify with other groupings. If one observes the state of our world today, this is the pattern that underlies our deadly and destructive social behavior. This mindset was no better articulated than when George W. Bush declared “you’re either with us, or against us.” Through years of careful conditioning, we learn to think of ourselves in terms of agencies and/or abstractions **external to our independent being**. Or, to express the point more clearly, we have learned to **internalize these external forces;** to **conform our thinking** and behavior to the purposes and interests of such entities. We adorn ourselves with flags, mouth shibboleths, and decorate our cars with bumper-stickers, in order to communicate to others our sense of “who we are.” In such ways does our being become indistinguishable from our chosen collective. In this way are institutions born. We discover a particular form of organization through which we are able to cooperate with others for our mutual benefit. Over time, the advantages derived from this system have a sufficient consistency to lead us to the conclusion that our well-being is dependent upon it. Those who manage the organization find it in their self-interests to propagate this belief so that we will become dependent upon its permanency. Like a sculptor working with clay, institutions take over the direction of our minds, twisting, squeezing, and pounding upon them until we have embraced a mindset conducive to their interests. Once this has been accomplished, we find it easy to subvert our will and sense of purpose to the collective. The organization ceases being a mere tool of mutual convenience, and becomes an end in itself. Our lives become “institutionalized,” and we regard it as fanciful to imagine ourselves living in any other way than as constituent parts of a machine that transcends our individual sense. **Once we identify ourselves with the state**, that collective entity does more than represent who we are; **it is who we are**. To the politicized mind, **the idea that “we are the government” has real meaning**, not in the sense of being able to control such an agency, but **in the psychological sense**. The successes and failures of the state become the subject’s successes and failures; insults or other attacks upon their abstract sense of being – such as the burning of “their” flag – become assaults upon their very personhood. Shortcomings on the part of the state become our failures of character. This is why so many Americans who have belatedly come to criticize the war against Iraq are inclined to treat it as only a “mistake” or the product of “mismanagement,” not as a moral wrong. Our egos can more easily admit to the making of a mistake than to moral transgressions. Such an attitude also helps to explain why, as Milton Mayer wrote in his revealing post-World War II book, They Thought They Were Free, most Germans were unable to admit that the Nazi regime had been tyrannical. It is this dynamic that makes it easy for political **officials to generate wars, a process that reinforces the sense of identity and attachment people have for “their” state**. It also helps to explain why most Americans – though tiring of the war against Iraq – refuse to condemn government leaders for the lies, forgeries, and deceit employed to get the war started: to acknowledge the dishonesty of the system through which they identify themselves is to admit to the dishonest base of their being. The truthfulness of the state’s rationale for war is irrelevant to most of its subjects. It is sufficient that they believe the abstraction with which their lives are intertwined will be benefited in some way by war. Against whom and upon what claim does not matter – except as a factor in assessing the likelihood of success. That most Americans have pipped nary a squeak of protest over Bush administration plans to attack Iran – with nuclear weapons if deemed useful to its ends – reflects the point I am making. Bush could undertake a full-fledged war against Lapland, and most Americans would trot out their flags and bumper-stickers of approval. The “rightness” or “wrongness” of any form of collective behavior becomes interpreted by the standard of whose actions are being considered. During World War II, for example, Japanese kamikaze pilots were regarded as crazed fanatics for crashing their planes into American battleships. At the same time, American war movies (see, e.g., Flying Tigers) extolled the heroism of American pilots who did the same thing. One sees this same double-standard in responding to “conspiracy theories.” “Do you think a conspiracy was behind the 9/11 attacks?” It certainly seems so to me, unless one is prepared to treat the disappearance of the World Trade Center buildings as the consequence of a couple pilots having bad navigational experiences! The question that should be asked is: whose conspiracy was it? To those whose identities coincide with the state, such a question is easily answered: others conspire, we do not. It is not the symbiotic relationship between war and the expansion of state power, nor the realization of corporate benefits that could not be obtained in a free market, that mobilize the machinery of war. Without most of us standing behind “our” system, and cheering on “our” troops, and defending “our” leaders, none of this would be possible. What would be your likely response if your neighbor prevailed upon you to join him in a violent attack upon a local convenience store, on the grounds that it hired “illegal aliens?” Your sense of identity would not be implicated in his efforts, and you would likely dismiss him as a lunatic. Only when our ego-identities become wrapped up with some institutional abstraction – such as the state – can we be persuaded to **invest** our **lives** and the lives of our children **in** the **collective** **madness** of state action. We do not have such attitudes toward organizations with which we have more transitory relationships. If we find an accounting error in our bank statement, we would not find satisfaction in the proposition “the First National Bank, right or wrong.” Neither would we be inclined to wear a T-shirt that read “Disneyland: love it or leave it.” One of the many adverse consequences of identifying with and attaching ourselves to collective abstractions is our loss of control over not only the **meaning** and direction **in our lives, but** of the manner in which we can be efficacious in **our efforts to pursue the purposes that have become central to us**.We become dependent upon the performance of “our” group; “our” reputation rises or falls on the basis of what institutional leaders do or fail to do. If “our” nation-state loses respect in the world – such as by the use of torture or killing innocent people - we consider ourselves no longer respectable, and scurry to find plausible excuses to redeem our egos. When these expectations are not met, we go in search of new leaders or organizational reforms we believe will restore our sense of purpose and pride that we have allowed abstract entities to personify for us. As the costs and failures of the state become increasingly evident, there is a growing tendency to blame this system. But to do so is to continue playing the same game into which we have allowed ourselves to become conditioned. One of the practices employed by the state to get us to mobilize our “dark side” energies in opposition to the endless recycling of enemies it has chosen for us, is that of psychological projection. Whether we care to acknowledge it or not – and most of us do not – each of us has an unconscious capacity for attitudes or conduct that our conscious minds reject. We fear that, sufficiently provoked, we might engage in violence – even deadly – against others; or that inducements might cause us to become dishonest. We might harbor racist or other bigoted sentiments, or consider ourselves lazy or irresponsible. Though we are unlikely to act upon such inner fears, their presence within us can generate discomforting self-directed feelings of guilt, anger, or unworthiness that we would like to eliminate. The most common way in which humanity has tried to bring about such an exorcism is by subconsciously projecting these traits onto others (i.e., “scapegoats”) and punishing them for what are really our own shortcomings. The **state** has **trained** **us** to behave this way, in order that we may be counted upon to invest our lives, resources, and other energies **in** **pursuit** **of** the **enemy** du jour. It is somewhat ironic, therefore, that most of us resort to the same practice in our criticism of political systems. After years of mouthing the high-school civics class mantra about the necessity for government – and the bigger the government the better – we begin to experience the unexpected consequences of politicization. Tax burdens continue to escalate; or the state takes our home to make way for a proposed shopping center; or ever-more details of our lives are micromanaged by ever-burgeoning state bureaucracies. Having grown weary of the costs – including the loss of control over our lives – we blame the state for what has befallen us. We condemn the Bush administration for the parade of lies that precipitated the war against Iraq, rather than indicting ourselves for ever believing anything the state tells us. We fault the politicians for the skyrocketing costs of governmental programs, conveniently ignoring our insistence upon this or that benefit whose costs we would prefer having others pay. The statists have helped us accept a world view that conflates our incompetence to manage our own lives with their omniscience to manage the lives of billions of people – along with the planet upon which we live! – and we are now experiencing the costs generated by our own gullibility. We have acted like country bumpkins at the state fair with the egg money who, having been fleeced by a bunch of carnival sharpies, look everywhere for someone to blame other than ourselves. We have been euchred out of our very lives because of our eagerness to believe that benefits can be enjoyed without incurring costs; that the freedom to control one’s life can be separated from the responsibilities for one’s actions; and that two plus two does not have to add up to four if a sizeable public opinion can be amassed against the proposition. By identifying ourselves with any abstraction (such as the state) we give up the integrated life, the sense of wholeness that can be found only within each of us. While the state has manipulated, cajoled, and threatened us to identify ourselves with it, the responsibility for our acceding to its pressures lies within each of us. The statists have – as was their vicious purpose – simply taken over the territory we have abandoned. **Our politico-centric pain and suffering has been brought about by our having allowed external forces to move in and occupy the vacuum we created at the center of our being**. The only way out of our dilemma involves a retracing of the route that brought us to where we are. **We require nothing so much right now as the development of a sense of “who we are” that transcends our institutionalized identities, and returns us** – without division and conflict – **to a centered, self-directed integrity in our lives.**

#### The logic of transparency prevents questioning of the underlying structures of governmentality that create the excesses they criticize—this card is really long and utterly destroys their aff

**Schumann 2k7** (William asst prof anthropology @ arkansas tech “Transparency, governmentality, and negation: democratic practice and open government policy in the National Assembly for Wales” Anthropological Quarterly 80.3 (2007) 837-862 muse)

Explicating from the case of the National Assembly and the ethnographic literature, one could argue that the most portable meaning of transparency is the negation of its absence. Transparency, in other words, assumes a specified (and public) character as a response to a specified (and publicized) circumstance of its lack. Rather than transcendent, openness is only the possibility of a specific historical context (Ku 1998:177); it is an [End Page 853] "invention of critique" bound within "analytic conventions" of representation (Levine 2004:103). Its exact meaning is shaped by defining exactly what it is not, i.e., the National Assembly is not the Welsh Office and the Welsh Office was not democratic or open, and thereby presumes anchorage to a spatial and temporal specificity that precedes its visibility, further implicating social interaction in its production. Transparency, through the Foucauldian lens articulated here, is a historicized practice of reproducing political right in the present. The scope and function of transparency is mapped out and imbued with the force of institutional power—a technology of the gaze (Foucault 1977), if you will—as the inverted double of its opposite: transparency/conspiracy (Sanders and West 2000), transparency/corruption (Ku 1998), transparency/secrecy (Florini 2000:13), transparency/evil (Baudrillard 2003:33-6; see also Crowley 2002), and in Wales, transparency/non-democracy. As a general signifier of institutional form, transparency demands a reorganization (and more purposefully, reform) of administrative practices toward visibility. The attendant presumption is that particular forms of disclosure equate with the exposure of absolute truths otherwise concealed. In this sense, transparency discourses operate in the guise of technocratic rationalism and systemic self-correction; reform assumes its own self-actualization as a necessary consequence of its publicity. Transparency is thus tied to virtual and material flows of reportage, access, and disclosure: direct broadcasting of parliamentary events, indirect and partial forms of news coverage, terrestrial and satellite communications systems, transportation networks, and spaces of observation, and personal recording devices such as camcorders (cf. Livingston 2000). Transparency outside these circuits may very well be impracticable, let alone unthinkable, and thereby announces one of transparency's central contradictions: some degree of publicity (or the same visibility networks) must be presupposed to name transparency's absence and presence. Or, from a more structural analysis of transparency: "To effectively alter the behavior of states and substate actors, regimes…must either have—or create—information about the activities they seek to regulate and the impact of those activities on the ultimate goals of the regime" (Mitchell 1998:111). Yet the mere existence of this social and technological infrastructure does not necessarily initiate "discovery" or reform. Epistemologically, transparency implies a democracy of supervisory techniques that, while explicitly requiring some form of extra-institutional [End Page 854] observability, do not break from the institutional threshold of its self-reproducing power. A priori, transparency practices must assume the presence of a generalized, homogenized public with not only equal access to information and influential people (Reddy 1992:136) but also with the ability to interpret information as relevant to democratic reform and, further, the ability to identify and navigate an appropriate institutional terrain in the interests of a shared public good (perhaps the most problematic aspect of transparency's telos). The responsibility and capacity to engender both surveillance and discipline as a practice of transparency, however, falls on the state apparatus to manufacture an open institutional environment, its rules and temporal sequences of verification, and the agents predisposed to monitor it. Rather than a dialectic of agents reacting to institutional structures or institutions acting on individuals, transparency is the productive confluence of each in the interests of specific historical circumstances of power. In the Welsh case, transparency is a reaction to Welsh political history as well as the contemporaneous dynamics of European governance; it is equally a practice that not only self-defines spaces of openness as open and Welsh, but also the spaces of secrecy that mark the limits of transparent performance. Ultimately, transparency is imbued with substance and form in the practices of deliberation that are the grounds on which openness and its antithesis are judged as evident. As a potential, or latent agency, this view of communicative and performative disclosure further implies a state-sponsored project of harmonizing social and institutional materiality and temporality. Without taking for granted the role of the media and other transparency networks in providing a window to openness, rights of accountability must be secured in shared spaces of membership (e.g., national or supranational citizenship as granting rights of access to the civil interlocutor) and in the state-organized coordination of institutional time (e.g., temporally organized sequences of institutional disclosure, simultaneous with or followed by regulated sequences of civil surveillance and intervention into institutional processes). As a government-regulated practice of regulating government, transparency demands the exposure of power as a means of mitigating against its excesses, yet without challenging the epistemological or ontological salience of "Western governance" as a general signifier of democratized social organization. Institutional relations and activities, public actors, and media visibility networks must be stripped of context—e.g., competing interpretations of openness, differentiated experiences of transparent practice, ever-partial forms [End Page 855] of media coverage and dissemination—to assume a functionally coherent and mutually integrating role in the public sphere. Transparency's dependence on the public sphere may well be the most sublime irony of modernity's auto-corrective project: the very problems of governmentality that give rise to the possibility of transparency reform indicate the asymmetries (of voice, access, etc.) in civil-state relations which undermine both the self-policing functions of political institutions (an essentially positivist epistemology) and the foundational legitimacy of "government of/by the people" (the ideological effect of democracy). Transparency specifies the possibility and impossibility of fully realizing the political goals of modernity. One aspect of this paradox that the National Assembly case study sheds light on is the problem of conflating the illumination of the mechanics of state power with substantively changing the civil-governmental relations upon which Western democratic power is legitimated. Transparency reforms may often usher in a democracy of access but not necessarily the democratization of decision-making. It potentially obfuscates as much as it illuminates. One cannot, in fact, assume a correlation between an open government policy and democratization (cf. Finel and Lord 2000b)—however much both are founded in shared ideals of the public sphere—precisely because "the human factor in democratization reflected in the gap between universal democratic values and culture and time-bound difficulties of democratic institutional practice cannot be over-emphasized" (Owusu 1997:122). Understanding the "gap" between rendering institutional practices transparent and rendering them democratic—an ideological and performative distance—is richly suggestive of ethnography's value for theorizing how and why (in the "lower case" sense of the question) such powerful global discourses are realized in local human contexts. What this article has contributed to this larger discussion, hopefully, is a reflection on the importance of understanding how the agents of governmentality act upon themselves to create the regimes of democratic action that legitimate their legislating and/or de-regulating the very "others" created through the governing process itself. Far from criticizing this deficiency in the anthropological literature, this article adds a needed counterpoint to wider discussions of transparency and governmentality and in the process raises new questions about how the Foucauldian turn so prominent in ethnographic writing can be deployed to analyze power and advocate on behalf of democratic alternatives to neoliberalism. Clearly, holding secrecy and openness in dialectic tension is a productive form of power [End Page 856] manifested in the strategies by which agents of the National Assembly for Wales advance their political goals. By observing the historical contingencies of open government as only a starting point for understanding how governmentality operates, rather than a theoretical background from which we may only observe the effects of the state on civilian populations, ethnography is left better suited to analyze how the simultaneously performative and substantiating nature of "transparent" political discourse is strategically deployed in the interests of shaping the lived experiences of national publics. Not only breathing fresh air into our application(s) of governmentality (and Foucault) in anthropological research, this approach also promises to make more precise our own tactics of policy advocacy in the "open" political environs of the twenty-first century. Conclusion Bringing electoral representation directly to Wales has affirmed a spatially distinct (but nonetheless UK-based) polity and legitimated the National Assembly not by harking back to some Welsh tradition, but to its historical antithesis judged against the contemporaneous logics of democratic transparency. A history of unrepresentative governance is reversed, not reproduced, in the new political order of Wales; it is this history that enables transparency to converge upon the epistemological generality of EU-UK governance and the ideological specificities of Welsh democracy as a rational policy intervention. In some respects, and particularly from a structure-oriented reading of the institutional outcomes of openness policy, the National Assembly has achieved a high degree of transparency. From this perspective, transparency initiates a series of policy-practices that form an essentially a self-correcting project. Openness is defined, evaluated, and regulated against an institutional image

of the National Assembly intended to be more open and accountable than its historical alterity, the Welsh Office. When evaluated as a practice of reproducing political power, however, transparency operates ambiguously in relation to its organizing ideal. As a changing protocol of institutional discipline, openness can only operate as an ideal continually sought through the reevaluation of itself. Just as transparency must assume a spatial and temporal dimension as a negation of its historical absence, so too do the future possibilities of its operation define its present. Absolute transparency, in other words, is[End Page 857] always deferred by the constant potentiality of extending institutional self-surveillance further along a self-defining axis of political legitimacy. Openness can only be an ideal and the producer of its own ambivalences. As a bifurcated practice of government that is publicly performed and secretly stabilized, transparency and its negation must share the same epistemological space of governance. Openness and secrecy are equally practiced in the name of democracy; they are the mutually constituting surface and depth of truth in contemporary politics.

### solvency

#### Cutting funding does nothing

Eric A. Posner and Adrian Vermeule 11, law profs at the University of Chicago and Harvard, Demystifying Schmitt, January, <http://www.law.uchicago.edu/files/file/333-eap-Schmitt.pdf>

If Congress cannot regulate in advance of emergencies, might it not be able to regulate once the emergency begins? The problem is that in the early stages of the emergency, the legislature is hampered by its many-headed structure. Large bodies of people deliberate and **act slowly** (unless they act as mobs). The best that the legislature can do is ratify the executive’s actions by blessing it with a retroactive authorization, or call a halt to the executive’s response by defunding it. As the emergency matures, the legislature continues to be hampered. Crises unfold in an unpredictable fashion; secrecy will be at a premium. Public deliberation compromises secrecy; the unpredictability of the threat eliminates the value of lawmaking. The legislature’s role in the emergency is marginal. It can grant or withhold political support; and it can legislate along the margins. The legislature may be able to undermine the executive response by defunding it, but it will rarely do so because some response is always better than none. The problem for the legislature is that it cannot make policy in a fine-grained way; its choice—broad support or none at all—is no choice at all. Anticipating a body of literature in positive political theory, Schmitt noted that “the extraordinary lawmaker [i.e. the President of the Reich] can create accomplished facts in opposition to the ordinary legislature. Indeed, especially consequential measures, for example, armed interventions and executions, can, in fact, no longer be set aside.”31 The President’s first-mover role – the “presidential power of unilateral action”32 – implies that he can create a new status quo that constrains Congress’ subsequent response, both in practical terms and because the President can use his veto powers to block legislative attempts to restore the status quo ante. Courts face similar problems. Detailed statutes enacted before the emergency will seem antiquated and inapt. Courts will feel pressure to interpret them loosely or use procedural obstacles to avoid their application. For this reason, violations of FISA and the Anti-Torture Act never led to prosecutions. Vague statutes enacted before and after the emergency provide no rule of decision, and courts are reluctant to substitute their views about policy for those of the executive, which has far more expertise and resources. Commentators have urged courts to use constitutional norms or even international law to control the executive, but these norms also prove to be ambiguous standards rather than clear-cut rules. To apply such standards, courts would have to engage in judicial policymaking. But judges do not believe that they have the information or expertise to make policy during emergencies and so they have seldom taken this approach.

#### Their uncritical affirmation of basic aspects of US law is steeped in racist logic.

Cho and Gott 10. Sumi Cho, professor of law at DePaul University, and Gil Gott, professor of international studies at DePaul University, “The Racial Sovereign,” Sovereignty, Emergency, Legality, ed. Austin Sarat, Cambridge University Press 2010: pg. 190

Sovereignty and other foundational legal principles in the United States developed homologously with the structures of societal racial formation.24 So, for example, how federalism would be defined, who could be a “citi- zen,” or what is meant by “military necessity” or “national security” all “grew up” next to the question of what it meant to be white, what it meant for “America” to be white, and what it meant to lack whiteness in the United States. Courts developed the lofty but racially contingent foundational legal principles in a way that effectively solidified the stratifications of racial caste. These foundational legal principles transcended legal rationales or distinc- tions, and asked the big questions of what it meant to be a nation, what the relationship was between state and federal governments, and how private property became constructed in the United States. National sovereignty,25 federalism,26 separation of powers,27 and plenary power 28 are all central legal principles on which the United States was founded. Each term embeds a racialized history in which race and law were mutually constructed. That these foundational legal principles originate in racial contingency and become defined and refined in the context of racial conflict reveals the his- torical processes by which race and law have been mutually constitutive in the United States.29

#### Don’t even let them into the house.

Memmi 2k. Albert Memmi, Professor Emeritus of Sociology at the University of Paris, Naiteire, Racism, Translated by Steve Martinot, pg. 163-165

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.

## 2NC

### k

#### Instead of being a policy maker, weigh the aff against the alternative without ignoring your situatedness—as a specific intellectual, you should weigh the power relations latent in each advocacy against each other

Owen 97. David Owen, professor of social sciences at Southampton University, 1997, “Maturity and Modernity: Nietszche, Weber, Foucault and the ambivalence of reason,” Routledge publishers, published July 22, 1997

In our reflections on Foucault’s methodology, it was noted that, like Nietszche and Weber, he commits himself to a stance of value-freedom as an engaged refusal to legislate for others. Foucault’s critical activity is oriented to human autonomy yet his formal account of the idea of autonomy as the activity of self-transformation entails that the content of this activity is specific to the struggles of particular groups and individuals. Thus, while the struggle against humanist forms of power/knowledge relations denotes the formal archiectonic interest of genealogy as critique, the determination of the ‘main danger’ which denotes the ‘filling in’ of this interest is contingent upon the dominant systems of constraint confronted by specific groups and individuals. For example, the constitution of women as ‘hysterical,’ of blacks as ‘criminal,’ of homosexuals as ‘perverted’ all operate through humanist forms of power/knowledge relations, yet the specificity of the social practices and discourses engaged in producing these ‘identities’ entails that while these struggles share a general formal interest in resisting the biopolitics of humanism, their substantive interests are distinct. It is against this context that Foucault’s stance of value-freedom can be read as embodying a respect for alterity. The implications of this stance for intellectual practice became apparent in Foucault’s distinction between the figures of the ‘universal’ and ‘specific’ intellectual. Consider the following comments: In a general way, I think that intellectuals-if this category exists, which is not certain or perhaps even desirable- are abandoning their old prophetic function. And by that I don’t mean only their claim to predict what will happen, but also the legislative function that they so long aspired for: ‘See what must be done, see what is good, follow me. In the turmoil that engulfs you all, here is the pivotal point, here is where I am.’ The greek wise man, the jewish prophet, the roman legislators are still models that haunt those who, today, practice the profession of speaking and writing. The universal intellectual, on Foucault’s account, is that figure who maintains a commitment to critique as a legislative activity in which the pivotal positing of universal norms (or universal procedures for generating norms) grounds politics in the ‘truth; of our being (e.g. our ‘real’ interests). The problematic form of this type of intellectual practice is a central concern of Foucault’s critique of humanist politics in so far as humanism simultaneously asserts and undermines autonomy. *If*, however, this is the case, what alternative conceptions of the role of the intellectual and the activity of critique can Foucault present to us? Foucault’s elaboration of the figure of the ‘specific’ inellectual provides the beginnings of an answer to this question: I dream of the intellectual who destroys evidence and generalities, the one who, in the inertias and constraints of the present time, locates and marks the weak points, the openings, the lines of force, who is incessantly on the move, doesn’t know exactly where he is heading nor what he will think tomorrow for he is too attentive to the present. The historicity of thought, the impossibility of locating an Archimedean point outside of time, **leads Foucault to locate intellectual activity as an ongoing** attentiveness to the present **in terms of what is singular** and arbitrary **in what we take to be universal** and necessary. Following from this, **the intellectual does not seek to offer** grand theories **but** specific analyses**,** not global but local criticism. We should be clear on the latter point for it is necessary to acknowledge that Foucault’s position does not entail the impossibility of ‘acceding to a point of view that could give us access to any complete and definitive knowledge of what may constitute our historical limits’ and, consequently, ‘ we are always in the position of beginning again’ (FR p. 47). The upshot of this recognition of the partial character of criticism is not, however, to produce an ethos of fatal resignation but, in far as it involves a recognition that everything is dangerous, ‘a hyper-and pessimistic activism’ (FR p. 343). In other words, it is the very historicity and partiality of criticism which bestows on the activity of critique its dignity and urgency. What of this activity then? We can sketch the Foucault account of the activity of critique by coming to grips with the opposition he draws between ‘ideal’ critique and ‘real’ transformation. Foucault suggests that the activity of critique ‘is not a matter of saying that things are not right as they are’ but rather ‘of pointing out what kinds of assumptions, what kinds of familiar, unchallenged, uncontested modes of thought and practices we accept rest’ (PPC p. 154). This distinction is perhaps slightly disingenuous, yet Foucault’s point is unintelligible if we recognize his concern to disclose the epistemological grammar which informs our social practices as the starting point of critique. This emerges in his recognition that ‘criticism (and radical criticism) is absolutely indispensable for any transformation’: A transformation that remains within the same mode of thought, a transformation that is only a way of adjusting the same thought more closely to the reality of things can merely be a superficial transformation. (PPC p. 155) The genealogical thrust of this critical activity is ‘to show that things are not as self-evident as one believed, to see that what is accepted as self-evident is no longer accepted as such’ for ‘as soon as one can no longer think things as one formerly thought them, transformation becomes both very urgent, very difficult, and quite possible’ (PPC p. 155). The urgency of transformation derives from the contestation of thought (and the social practices in which it is embedded) as the form of our autonomy, although this urgency is given its specific character for modern culture by the recognition that the humanist grammar of this thought ties us into the technical matrix of biopolitics. The ‘specificity’ of intellectual practice and this account of the activity of critique come together in the refusal to legislate a universal determination of ‘what is right’ in favour of the perpetual problematisation of the present. It is not a question, for Foucault, of invoking a determination of who we are as a basis for critique but of locating what we are now as the basis for a reposing of the question, “who are we?” the role of the intellectual is thus not to speak on behalf of others (the dispossessed, the downtrodden) **but to** create the space **within which** their struggles become visible **such that these others** can speak for themselves. The question remains, however, as to the capacity of Foucault’s work to perform this critical activity through an entrenchment of the ethics of creativity as the structures of recognition through which we recognize our autonomy in the contestation of determinations of who we are.

#### SOLVES THEIR AFF

Weiskopf and Willmott 13. Richard Wesikopf, professor of organization and learning at the University of Innsbruck, and Hugh Willmott, professor of organization studies at Cardiff University, Ethics as Critical Practice: The “Pentagon Papers”, Deciding Responsibly, Truth-telling, and the Unsettling of Organizational Morality 34(4) pg. 486

When conceiving of ethics as a critical practice, there is no concern to judge organization(s), or ¶ organizational members, from the high ground of moral theory. Nor is there any interest in developing (universal) criteria for determining whether organizational phenomena, such as (Ellsberg’s) ¶ whistleblowing, are morally correct or ethically defensible. In considering morality as contingent ¶ and power-infused practice, our “ethics as critical practice” approach does not deny the possibility, ¶ and indeed necessity, of morality and the associated exercise of (moral) judgements. What it does¶ deny is the transcendental grounding or guarantee of such judgements. Accordingly, the approach ¶ commended here eschews the assumption of centred, “autonomous” individuals as a condition of ¶ ethics in organizations (Alford, 2001; see Knights and Willmott, 2002, for a critique). It also ¶ departs from virtue-based studies that attribute ethical acts to character strengths of particularly ¶ “virtuous” individuals, and so heroize them as “saints of a secular culture” (Grant, 2002) “who ¶ stand out from the rest of us” (2002: 398). Our approach acknowledges how disciplinary practices ¶ establish and sustain “moralities-in-use” and the modes of being that conform with their demands. ¶ But it insists that normative demands, such as the demands for loyalty and secrecy that permeated ¶ the morality of the Pentagon, can never fully determine human action and so occupy the “undecided space of ethics” (Iedema and Rhodes, 2010).¶ Daniel Ellsberg’s leaking of the Pentagon Papers, a case of whistleblowing that “interrupted” ¶ widely shared understandings of the operation of US democratic government, has been deployed ¶ to illustrate how the grip of institutionalized normative demands upon subjectivity may be weakened through participation in countervailing practices. To question established practices – and the ¶ norms that they articulate and reproduce – is, we have argued, to engage in ethics as a critical ¶ practice. Such questioning does not rely upon, or appeal to, some alternative standard or yardstick ¶ but, instead, manifests an “ethical sensibility” (Connolly, 1993) that is responsive to the other, and has the courage to speak out when practices are perceived as “intolerable” (Foucault, 2001b). To engage in ethics as critical practice involves acting – as Ellsberg did – as a “specific intellectual”, in Foucauldian terms. This possibility is by no means restricted to an elite cadre of “intellectuals”, as it may include the actualization of the critical attitude in various practices and professional con- texts. As Foucault observes,

[w]ithin these different forms of activity, I believe it is quite possible ... to do one’s job as a psychiatrist, lawyer, engineer, or technician, and to carry out in that specific area work that may properly be called intellectual, an essentially critical work. [...] a work of examination that consists of suspending as far as possible the system of values to which one refers when ... assessing it. In other words: What am I doing at the moment I’m doing it? (Foucault, 1988: 107; quoted in Chan, 2000: 1071, emphasis added)

Conceiving of ethics as a critical practice invites a rethinking of established, morality-centric conceptions of ethics, including much thinking about “business ethics” and “professional ethics” (e.g. of executives) (Cooper, 2012). Instead of associating ethics with compliant enactment of a particular, privileged morality, the challenge is to engage in critical work within such mundane settings. When conceived as critical practice, ethics is an ongoing agonistic 21 struggle played out in relation to established moralities embedded within relations of power and domination.

#### The plan is legal armature for drones as a strategy in the war on terror—our Krassman evidence says the way that they try to move drones from a grey area into possible white areas of the laws, the way that their plan text uses the phrase “unless” is what ultimately they miss when they think that power is just about the law and that it would not inform what the word UNLESS meant in the world of the affirmative

Gregory 13. Derek Gregory, Peter Wall Distinguished Professor of geography at the University of British Columbia, “The individuation of warfare?” August 26, 2013, <http://geographicalimaginations.com/2013/08/26/the-individuation-of-warfare/>, accessed September 7, 2013

These new modalities increase the asymmetry of war – to the point where it no longer looks like or perhaps even qualifies as war – because they preclude what Joseph Pugliese describes as ‘“a general system of exchange” [the reference is to Achille Mbembe’s necropolitics] between the hunter-killer apparatus ‘and its anonymous and unsuspecting victims, who have neither a right of reply nor recourse to judicial procedure.’

Pugliese insists that drones materialise what he calls a ‘prosthetics of law’, and the work of jurists and other legal scholars provides a revealing window into the constitution of later modern war and what, following Michael Smith, I want to call its geo-legal armature. To date, much of this discussion has concerned the reach of international law – the jurisdiction of international law within(Afghanistan) and beyond (Pakistan, Yemen and Somalia) formal zones of conflict – and the legal manoeuvres deployed by the United States to sanction its use of deadly force in ‘self-defence’ that violates the sovereignty of other states (which includes both international law and domestic protocols like the Authorization for the Use of Military Force and various executive orders issued after 9/11) . These matters are immensely consequential, and bear directly on what Frédéric Mégret [calls](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1986548) ‘[the deconstruction of the battlefield](http://geographicalimaginations.com/2012/11/21/gaza-stripped-the-deconstruction-of-the-battlefield/)’ It’s important to understand that the ‘battlefield’ is more than a physical space; it’s also a normative space – the site of ‘exceptional norms’ within whose boundaries it is permissible to kill other human beings (subject to particular codes, rules and laws). Its deconstruction is not a new process. Modern military violence has rarely been confined to a champ de mars insulated from the supposedly safe spaces of civilian life. Long-range strategic bombing radically re-wrote the geography of war. This was already clear by the end of the First World War, and in 1921 Giulio Douhetcould already confidently declare that

‘By virtue of this new weapon, the repercussions of war are no longer limited by the farthest artillery range of guns, but can be felt directly for hundreds and hundreds of miles… The battlefield will be limited only by the boundaries of the nations at war, and all of their citizens will become combatants, since all of them will be exposed to the aerial offensives of the enemy. There will be no distinction any longer between soldiers and civilians.’

The laboratory for these experimental geographies before the Second World War was Europe’s colonial (dis)possessions – so-called ‘air control’ in North Africa, the Middle East and along the North-West Frontier – but colonial wars had long involved ground campaigns fought with little or no distinction between combatants and civilians.

What does seem to be novel about more recent deconstructions, so Mégret argues, is ‘a deliberate attempt to manipulate what constitutes the battlefield and to transcend it in ways that liberate rather than constrain violence.’

This should not surprise us. Law is not a deus ex machina that presides over war as impartial tribune. Law, Michel Foucault reminds us, ‘is born of real battles, victories, massacres and conquests’; law ‘is born in burning towns and ravaged fields.’ Today so-called ‘operational law’ has incorporated military lawyers into the kill-chain, moving them closer to the tip of the spear, but law also moves in the rear of military violence: in Eyal Weizman’s [phrase](http://www.e-flux.com/journal/the-least-of-all-possible-evils/), ‘violence legislates.’ In the case that most concerns him, that of the Israel Defense Force, military lawyers work in the grey zone between ‘the black’ (forbidden) and ‘the white’ (permitted) and actively seek to turn the grey into the white: to use military violence to extend the permissive envelope of the law.

The liber(alis)ation of violence that Mégret identifies transforms the very meaning of war. In conventional wars combatants are authorised to kill on the basis of what Paul Kahn [calls](http://www.iilj.org/courses/documents/2011Colloquium.Kahn.pdf) their corporate identity:

‘…the combatant has about him something of the quality of the sacred. His acts are not entirely his own….

‘The combatant is not individually responsible for his actions because those acts are no more his than ours…. [W]arfare is a conflict between corporate subjects, inaccessible to ordinary ideas of individual responsibility, whether of soldier or commander. The moral accounting for war [is] the suffering of the nation itself – not a subsequent legal response to individual actors.’

The exception, Kahn continues, which also marks the boundary of corporate agency, is a war crime, which is ‘not attributable to the sovereign body, but only to the individual.’ Within that boundary, however, the enemy can be killed no matter what s/he is doing (apart from surrendering). There is no legal difference between killing a general and killing his driver, between firing a missile at a battery that is locking on to your aircraft and dropping a bomb on a barracks at night. ‘The enemy is always faceless,’ Kahn explains, ‘because we do not care about his personal history any more than we care about his hopes for the future.’ Combatants are vulnerable to violence not only because they are its vectors but also because they are enrolled in the apparatus that authorizes it: they are killed not as individuals but as the corporate bearers of a contingent (because temporary) enmity.

#### Juridical logic must be completely abandoned—a completely new analytics of power must be constructed in its place

Minkkinen 97. Panu Minkkinen, faculty of law at the University of Helsinki, “The Juridical Matrix,” Social & Legal Studies 1997 6: pg. 434

The other set of questions refers to the ’founding’ relation of social, non-discursive practices in relation to discursive practices. How can one account for Foucault’s obstinacy in explaining this relation with juridical and quasijuridical terminology? How should one integrate theoretically the regulative logic of, for example, the rules of formation (Foucault, 1969: 53) to Foucault’s later position on refuting the repressive hypothesis according to which a juridical logic must be abandoned altogether: ’This image we must break free of, namely, of the theoretical privilege of law and sovereignty, if we wish to analyse the concrete and historical development of the methods of power. A power-analytics must be constructed that no longer follows law as a model and a code’ (1976: 118-19). The question, then, concerns the juridical nature of the internal logic of Foucault’s theory. The central position of power in Foucault’s later work cannot account for this logic. But in the introduction of Surveiller et punir, Foucault clarifies one aim of the research by referring to matrices: Instead of treating the histories of penal law and the human sciences as two separate series whose overlapping would have had, depending on one’s perspective, either a damaging or a useful effect on one or the other - or perhaps on both - we should look into the possibility of a common matrix or that they both derive from a ’juridico-epistemological’ process of formation. (1975: 28) In other words, discursive practices such as penal law and the human sciences share a matrix that, in turn, is inferred from social practices such as the prison. Later Foucault (1975: 186-94) does take up the matrix of examination (examen), a ritual connected to the formation of knowledge that enables the singularization and the objectification required by disciplinary power. The essential components of the examination are the moving of the domain of visibility from its source to its objects; the development of detailed and observable characteristics suitable for documentation; and, lastly, with the help of the developed symptomatology, the possibility of singularizing the visible object of power: ’the examination is at the centre of the procedures that constitute the subject as effect and object of both power and knowledge’ (p. 194). In La volonté de savoir, Foucault differentiates the objective effect of the examination from the subjective effect of the confession (aveu). In the confession, the speaking subject and the subject of speech become one in a juridico-religious ritual in which ’truth is authenticated by the obstacles and resistances it has had to overcome in order to be formulated’ (1976: 83). The matrix is not a social practice as such but a structural reduction thereof - of juridical practices, medical practices, religious practices and so on (cf. 1994b: 316-18). Through the procedures, the matrix uniting different social practices effects the discursive field. Although the relation between the discursive and the non-discursive is disjunctive, the effect is formative. In Surveiller et punir, Foucault mentions briefly two other juridico-political matrices that are connected to the formation of knowledge: It is, perhaps, true that, in Greece, the mathematical sciences were born from the techniques of the measure [mesure], but towards the end of the Middle Ages, the practices of the investigation [enquete] at least partly contributed to the birth of the natural sciences. (1975: 227; cf. 1976: 78-80) In other, less well-known texts, Foucault takes up the matrices in more detail. This is one of the most important law-related aspects of Foucault’s work from the 1970s. One of the aims of his morphological project is to write, with the help of the matrices, a history of power. The matrices uniting social practices account for the formative effect of the non-discursive vis-a-vis the discursive. The epochal periodization of Foucault’s history can be structured as a succession of matrices derived from, for the most part, juridical practices: the time preceding Greek democracy and the trial (6preuve); the polis and the measure; the Middle Ages and the investigation; and, finally, the examination and the confession of modernity discussed in detail in Surveiller et punir and La volonté de savoir respectively. The individual practices, in turn, are responsible for the production of truth in power-knowledge relations. ’Law’, which the epochal variations account for the history of power-knowledge in Occidental civilization.

#### the impact is the effacement of their own subject positions within power, which turns the case, vote neg on presumption

Salter 85. M.G. Salter, lecturer in criminal law at the University of Birmingham, “The Rule of Power in the Language of Law,” The Liverpool Law Review Vol.VII(1) [1985] pg. 36

Through such codes of discipline language itself lays down the forms of discourse which are judged appropriate and inappropriate. For their continued vigour, these codes actually depend upon the multiplicity of points of resistance by those - including the staff - who are subject to them. Resistances actively serve as footholds, targets, supports and adversaries for power. Power relations here are not then attributable to, or owned by a single group or class, but arise in an apparently anonymous manner from interactions within the local situations in which they first appear.

Now if this is true, it has real consequences for the common sense of legal culture. It suggests that its truth- claims concerning the power/truth relation are themselves possible and comprehensible only because power operates within their own discourse, productively excluding some interpretations, attitudes and actions as "inappropriate" and therefore creating a possible common ground for their intelligibility as such. (4) This productivity of power appears in the mutual implication of positive and negative determinations of all legal meaning over time and through productive disowning. For example, during a contract law tutorial the tedious determination of what an "offer" is for Contract law, involves the progressive unfolding of all that it does not mean, i.e. invitation to treat, continuing negotiations etc. Thus the limiting process of disowning - the self-exercise of the power of exclusion in meaning- determination - presents itself to be ultimately productive of truth.

Further we can see that all claims to a truthful critique - including those of this text - are "positive" and productive of truth only through their power of disowning the overall position that is successfully criticised. The experience of a continually disowned/re-owned world of law is then the pre-condition for the production of insight and truth-claims about its workings - including common sense views about the unproductivity of power. Thus at both the level of particular explication of meanings and that of the overall development within the "discipline" of law, the juxta-position of truth and power now appears no longer to be sustainable. Our discursive knowledge of the power/truth connection is, by virtue of its discursive character, implicated in that which it examines. This appears when we consider the derivation of much of the "knowledge" imparted by "criminology" courses from languages of punishment. Here not only does such "academic knowledge" emanate from the exercise of this form of state power, but by largely treating crime as about the explanation of criminal behaviour, this "knowledge" returns to support and legitimate the institutional exercise of criminalising powe**r**. It does this partly by reducing intellectual and theoretical problems to social policy ones. This leaves the whole exercise quite untroubled by critical thought. Therefore the implication of power, knowledge and legal discourse goes far deeper than simple encouragement or application. Instead legal discourse and power relations mutually imply one another to the extent that they cannot be conceived of without each other. For example, the power relations at work in the court room between the judge, jury, public, media, court officers, advocates, witnesses and accused give rise to a distinctive "knowledge" available for "Legal Methods" courses. It becomes available through a hierarchy of relations between and among law- reporters, publishers, lecturers, students, college traditions and government administrators. Here power demarcates what is sayable, to whom, in what manner, about what and when; yet the consequences of this demarcation is to open up and temporalise a common historical world of law and "legal education". We shall examine later how it produces a domain of legal subjects, objects and rituals for determining their truth through an ever-proliferating discourse on law.

#### 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? We solve their covert action argument BETTER

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

#### Aff’s politically useless

**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**.**