## 1NC

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#### The mythic justice of the law is illusory. The instant that justice glimmers in the form of the law it retreats behind an impressive array of gatekeeprs who exclude some on the basis of arbitrary criteria; the black, queer, chicana are woman are all excluded from the liberation rationalities of law and transcendence. Lawsuits, courts, appeals, and jurisprudence are only so many attempts to veil justice behind obstacles, bureaucracies and sovereignties.

Franz Kafka 1915 (“Before the Law,” Trans. Ian Johnston, http://www.kafka-online.info/before-the-law.html)

Before the law sits a gatekeeper. To this gatekeeper comes a man from the country who asks to gain entry into the law. But the gatekeeper says that he cannot grant him entry at the moment. The man thinks about it and then asks if he will be allowed to come in later on. “It is possible,” says the gatekeeper, “but not now.” At the moment the gate to the law stands open, as always, and the gatekeeper walks to the side, so the man bends over in order to see through the gate into the inside. When the gatekeeper notices that, he laughs and says: “If it tempts you so much, try it in spite of my prohibition. But take note: I am powerful. And I am only the most lowly gatekeeper. But from room to room stand gatekeepers, each more powerful than the other. I can’t endure even one glimpse of the third.” The man from the country has not expected such difficulties: the law should always be accessible for everyone, he thinks, but as he now looks more closely at the gatekeeper in his fur coat, at his large pointed nose and his long, thin, black Tartar’s beard, he decides that it would be better to wait until he gets permission to go inside. The gatekeeper gives him a stool and allows him to sit down at the side in front of the gate. There he sits for days and years. He makes many attempts to be let in, and he wears the gatekeeper out with his requests. The gatekeeper often interrogates him briefly, questioning him about his homeland and many other things, but they are indifferent questions, the kind great men put, and at the end he always tells him once more that he cannot let him inside yet. The man, who has equipped himself with many things for his journey, spends everything, no matter how valuable, to win over the gatekeeper. The latter takes it all but, as he does so, says, “I am taking this only so that you do not think you have failed to do anything.” During the many years the man observes the gatekeeper almost continuously. He forgets the other gatekeepers, and this one seems to him the only obstacle for entry into the law. He curses the unlucky circumstance, in the first years thoughtlessly and out loud, later, as he grows old, he still mumbles to himself. He becomes childish and, since in the long years studying the gatekeeper he has come to know the fleas in his fur collar, he even asks the fleas to help him persuade the gatekeeper. Finally his eyesight grows weak, and he does not know whether things are really darker around him or whether his eyes are merely deceiving him. But he recognizes now in the darkness an illumination which breaks inextinguishably out of the gateway to the law. Now he no longer has much time to live. Before his death he gathers in his head all his experiences of the entire time up into one question which he has not yet put to the gatekeeper. He waves to him, since he can no longer lift up his stiffening body.The gatekeeper has to bend way down to him, for the great difference has changed things to the disadvantage of the man. “What do you still want to know, then?” asks the gatekeeper. “You are insatiable.” “Everyone strives after the law,” says the man, “so how is that in these many years no one except me has requested entry?” The gatekeeper sees that the man is already dying and, in order to reach his diminishing sense of hearing, he shouts at him, “Here no one else can gain entry, since this entrance was assigned only to you. I’m going now to close it.

#### The U.S. legal system is also a myth, based only on ever-disappearing traces of justice. Like with the legal theory of the gatekeepers, each case is considered unique and discrete—the universal principle of justice could only ever be deductively applied, already requiring a transcendence away from any kind of immanent political subjectivity.

The D.C. District Court, ruling in the case of Al-Aulaqi v. Obama in 2010 (District Court Ruling, full opinion available at http://www.lawfareblog.com/wp-content/uploads/2010/12/Al-Aulaqi-Decision-Granting-Motion-to-Dismiss-120710.pdf)

On August 30, 2010, plaintiff Nasser Al-Aulaqi ("plaintiff") filed this action, claiming that the President, the Secretary of Defense, and the Director of the CIA (collectively, "defendants") have unlawfully authorized the targeted killing of plaintiff's son, Anwar Al-Aulaqi, a dual U.S.-Yemeni citizen currently hiding in Yemen who has alleged ties to al Qaeda in the Arabian Peninsula ("AQAP"). Plaintiff seeks an injunction prohibiting defendants from intentionally killing Anwar Al-Aulaqi "unless he presents a concrete, specific, and imminent threat to life or physical safety, and there are no means other than lethal force that could reasonably be employed to neutralize the threat." See Compl., Prayer for Relief (c). Defendants have responded with a motion to dismiss plaintiff's complaint on five threshold grounds: standing, the political question doctrine, the Court's exercise of its "equitable discretion," the absence of a cause of action under the Alien Tort Statute ("ATS"), and the state secrets privilege. This is a unique and extraordinary case. Both the threshold and merits issues present fundamental questions of separation of powers involving the proper role of the courts in our constitutional structure. Leading Supreme Court decisions from Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803), through Justice Jackson's celebrated concurrence in Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579 (1952), to the more recent cases dealing with Guantanamo detainees have been invoked to guide this Court's deliberations. Vital considerations of national security and of military and foreign affairs (and hence potentially of state secrets) are at play. Stark, and perplexing, questions readily come to mind, including the following: How is it that judicial approval is required when the United States decides to target a U.S. citizen overseas for electronic surveillance, but that, according to defendants, judicial scrutiny is prohibited when the United States decides to target a U.S. citizen overseas for death? Can a U.S. citizen -- himself or through another -- use the U.S. judicial system to vindicate his constitutional rights while simultaneously evading U.S. law enforcement authorities, calling for "jihad against the West," and engaging in operational planning for an organization that has already carried out numerous terrorist attacks against the United States? Can the Executive order the assassination of a U.S. citizen without first affording him any form of judicial process whatsoever, based on the mere assertion that he is a dangerous member of a terrorist organization? How can the courts, as plaintiff proposes, make real-time assessments of the nature and severity of alleged threats to national security, determine the imminence of those threats, weigh the benefits and costs of possible diplomatic and military responses, and ultimately decide whether, and under what circumstances, the use of military force against such threats is justified? When would it ever make sense for the United States to disclose in advance to the "target" of contemplated military action the precise standards under which it will take that military action? And how does the evolving AQAP relate to core al Qaeda for purposes of assessing the legality of targeting AQAP (or its principals) under the September 18, 2001 Authorization for the Use of Military Force?

#### The law is devious and malicious even as it wears the mask of ethics; in recognizing the importance of one’s own claim to justice, by continuously re-articulating the benevolence of the law, the judicial order only creates the conditions to withdraw itself. The myth of jurisdiction relies on both a theory of spatial sovereignty and personal accountability to a sovereign, which reinforces juridical orders of exception and suspension of the applicability of the law. We can have no hope in the law—only disappointments.

The D.C. District Court, ruling in the case of Al-Aulaqi v. Obama in 2010 (District Court Ruling, full opinion available at http://www.lawfareblog.com/wp-content/uploads/2010/12/Al-Aulaqi-Decision-Granting-Motion-to-Dismiss-120710.pdf)

These and other legal and policy questions posed by this case are controversial and of great public interest. "Unfortunately, however, no matter how interesting and no matter how important this case may be . . . we cannot address it unless we have jurisdiction." United States v. White, 743 F.2d 488, 492 (7th Cir. 1984). Before reaching the merits of plaintiff's claims, then, this Court must decide whether plaintiff is the proper person to bring the constitutional and statutory challenges he asserts, and whether plaintiff's challenges, as framed, state claims within the ambit of the Judiciary to resolve. These jurisdictional issues pose "distinct and separate limitation[s], so that either the absence of standing or the presence of a political question suffices to prevent the power of the federal judiciary from being invoked by the complaining party." Schlesinger v. Reservists Comm. to Stop the War, 418 U.S. 208, 215 (1974) (internal citations omitted). Although these threshold questions of jurisdiction may seem less significant than the questions posed by the merits of plaintiff's claims, "[m]uch more than legal niceties are at stake here" -- the "constitutional elements of jurisdiction are an essential ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects." Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 101 (1998). Here, the jurisdictional hurdles that plaintiff must surmount are both complex and at the heart of the intriguing nature of this case. But "[a] court without jurisdiction is a court without power, no matter how appealing the case for exceptions may be," Bailey v. Sharp, 782 F.2d 1366, 1373 (7th Cir. 1986) (Easterbrook, J., concurring), and hence it is these threshold obstacles to reaching the merits of plaintiff's constitutional and statutory challenges that must be the initial focus of this Court's attention. Because these questions of justiciability require dismissal of this case at the outset, the serious issues regarding the merits of the alleged authorization of the targeted killing of a U.S. citizen overseas must await another day or another (non-judicial) forum.

#### And, statutory alterations are toothless to stop the power of executive decisionism; arbitrary judicial standards guarantee continued deference ot executive agencies as a matter of fact required by the very structural constrains of administrative law—their faith in legal institutions to correct themselves relies on a flase hope in the enlightenment of the executive which is disproven by their own inherency claims.

Fabbri 2009 (Lorenzo, PhD Philosophy, also graduate student in Romance Studies at Cornell University, “Chronotopologies of the Exception Agamben and Derrida before the Camps,” Diacritics, Vol. 39 No. 3 2009, Muse)CJQ

Drawing from Schmitt, Vermeule demonstrates that it is not possible to eliminate the dialectic between norm and decision by imposing a law to the exception. The texture of administrative law does not only allow but actually requires what David Dyzenhaus has recognized as grey and black holes, substantially lawless zones which exempt the executive and government agencies from legal constraints. Black holes are spaces that administrative law secures from the possibility of judicial review altogether. Under the category of grey hole fall all the cases in which reverential lower courts dial down the intensity of review to the point that the scrutiny of government agencies is only a formalism. Since administrative law is organized around vague parameters such as the arbitrary and capricious standard, the substantial evidence test, and the good cause exception, federal courts of appeal “during perceived emergencies [can and do] adjust to increase deference to administrative agencies” [Vermeule, “Our Schmittian Administrative Law” 1097]. Vermeule notes that for classic liberal legalism, grey holes are far more problematic than black ones because they consist in a substantial violation of the law that is formally justified on the basis of a certain reading of laws themselves. A body that is caught in one is awarded some procedural rights by a deferent judiciary, but not enough to effectively confront the executive’s decision [Dyzenhaus, “Schmitt v. Dicey” 2026]. To put it in Derridian terminology: the judiciary’s deference toward the executive takes the form of a two-fold differential gesture. In order to prevent certain detainees from opposing the measures to which they are subjected, courts defer the moment in which they will be treated as normal persons, both by granting them a laughable amount of constitutional rights and by “ducking legal challenges with the help of the copious procedural mechanisms at their disposal—standing doctrine, denial of certiorari, delay, and so forth” [Posner and Vermeule, “Accommodating Emergencies” 2]. In black holes the executive’s actions appear for what they are—exceptional decisions that take place outside of the customs determined by the rule of law. Grey holes, on the other hand, allow courts to pass administrative agencies’ extraordinary decisions as norms—compromising de jure and de facto the distinction between norms and decisions, normality and exception, rule of law and rule by law. While Ackerman tried to disseminate sovereignty across the different branches in order to limit any dictatorial drift, Vermeule suggests that sovereign extra- or pseudo-legal decisions are exactly what emergencies require. The attempt to limit the executive is both impracticable—given the structure of our times—and infeasible—given the structure of administrative law: grey and black holes are inevitable since it is impossible to subject government agencies to solid legal standards. The very idea of “standard” implies in fact that it can rule only in ordinary cases, and that changing circumstances require a different application of the standard itself, an application that actually allows for [End Page 83] executive decisions to “proceed untrammeled by even the threat of legal regulation and judicial review” [Vermeule, “Our Schmittian Administrative Law” 1133]. Then, in case of emergencies there is “no real choice but to hand the reins to the executive and hope for the best” [Posner and Vermeule, “Crisis Governance” 1614]. But is it true that our only alternative is between hope in the executive and despair, between deference and destruction? The history of emergency powers in the twentieth century has taught us that hope and despair, deference and destruction are not dialectical terms, but instead often work in solidarity with each other. Hope in the redemptive power of executive actions leads to a more incurable despair, and deference to them leads to an unthinkable level of destruction. With great responsibility comes great power: a thanatopolitical détournement of President Roosevelt’s famous line from his undelivered 1945 Jefferson Day Address would sound more or less like this. And it would oblige us to realize that by positioning ourselves in need of salvation, we expose our precarious lives to the eventuality of sacrifice. To put it differently: should not the history of emergency powers, along with Vermeule’s inscription of exception within the texture of administrative law, generate a less hopeful, more worrisome attitude before a sovereign power? How is it possible to restrain a government agency from treating not only “them” as terrorists but “us” as well? What can prevent us from plunging into one of the infernal circles where homines sacri live? In the pages that follow, I will explore Derrida and Agamben’s readings of Kafka’s “Before the Law” in order to highlight the conceptual similarities in their understanding of the relation between the exception and the law, and the strategic differences in their confrontation with a camp discovered to be the foundation of the rule of law.

#### In particular, at the level of existential litigation over taregeted killing lives are literally reduced to letters printed on paper and subject to the whims of other written orders authorizing that life’s execution. The life of the subject under litigation becomes reducible to the markings on the page indicating their life—life and law become literally indistinguishable. Any hope in the law is a myth, progressing inevitably toward the complete subsumation of all life by law.

Vatter 2008 (Miguel, Prof. Political Science at Universidad Diego Portales, Santiago, Chile, “In Odradek’s World: Bare Life and Historical Materialism in Agamben and Benjamin” Diacritics Vol. 38 No. 3)CJQ

Kafka’s Before the Law tells the story of a “man from the country” who stations himself before the open gate of the Law and waits, to the point of death, for the doorkeeper to let him in.37 On dying, the doorkeeper reveals to him that this entrance to the Law had [End Page 61] been left open only for him, and that it would henceforth be closed again. For Agamben this parable shows how the law exercises its mythical violence over life, captivating bare life in its logic of the exception: “The open door destined only for him includes him in excluding him and excludes him in including him” [Homo sacer 50]. The parable describes the process through which life, caught in the state of exception, becomes entirely determined and taken over by law. This process culminates in the bare lives of the “sacred men” found at both ends of the spectrum of sovereign power: in the totalitarian egocrat as “living law,” whose every desire becomes law; and in the inmates of extermination camps, whose bodies incarnate the “laws” of racial superiority or class warfare without the intermediation by positive, statutory laws that address them as individuals endowed with rights.38 Agamben argues that bare life in the “willed” or “virtual” state of exception characteristic of sovereign power is “life under a law that is in force without signifying. . . . And it is exactly this kind of life that Kafka describes, in which law is all the more pervasive for its total lack of content” [Homo sacer 53]. Agamben employs an expression that Scholem uses to describe the status of revealed Law in Kafka’s Before the Law. According to Scholem’s reading, the parable depicts the addressees of the Law as having lost the keys to unlock its meaning: they study the commentary (aggadah) but remain locked out of the law (halakah), unable to apply it and thus to follow it. Consequently, for them the Law appears as Nothingness: it “has validity but no significance.”39 Although the Law is devoid of all meaning for its students, Scholem nonetheless suggests that it continues to demand obedience and must be transmitted even though it cannot be applied, since the gate guarded by aggadah remains open.40 Agamben thereby identifies Scholem’s “mystical” formula of revealed Law in the time of galut with the Arcanum of the sovereign power of positive legal systems in the time of totalitarianism (in the period of states of exception). For Agamben the loss of significance of revealed Law coincides with the gradual but inevitable expansion of the “virtual” state of exception in and through systems of positive law, all the way to the point at which the state of exception is no longer exceptional but has become the rule. Agamben takes up Benjamin’s reading of the parable to illustrate the possibility of a revolutionary reversal of the “willed” state of exception in an event that would bring about a “real state of exception,” where it is not that life gets taken over by the law, but conversely that all law becomes “indistinguishable from life.”41 Benjamin reads Kafka’s parables as illustrations of this revolutionary turnabout of bare life in “the attempt to metamorphize life into writing [dem Versuch der Verwandlung des Lebens ins Schrift]” [CC 453]. On Agamben’s interpretation, this metamorphosis corresponds to an “absolute intelligibility of a life wholly resolved into writing” [Homo sacer 55]. In the messianic condition, bare life is lived out as if it were written out ahead of the one living it, as if it were developing from a singular law unto itself.

#### The alternative is vote negative and pursue justice in spite of the law.

#### The ethical relation to the Other is before any other considerations—the self is held hostage in realtion to difference. Do not use the position of the judge to pass a judgment on one team or another—imagine as if you were a judge condemning these people to death; every act of judgment always carries a death sentence—each and every appeal in the court system only a pathway for a new withdrawal of the law. Justice is ethics and not mere positive legislation—it is a call for compassion beyond any legal text, something more profound than any court’s ruling could capture.

Holland 2003 (Suzanne, Prof. Religion, Univ. Puget Sound, “Levinas and Otherwise-than-Being (Tolerant): Homosexuality and the Discourse of Tolerance” JAC Online: A Journal of Rhetoric, Culture & Politics, Vol. 23.1: 2003)CJQ

Substitution, almost ironically, is Levinas' term for explaining that which cannot be escaped. I am commanded, as he says, "not to abandon the other," and I, alone, must take up this responsibility; no one can substitute for me. In this sense, I am thoroughly a hostage to the other; it is a condition not of my choosing, but of having been chosen, of the "ineradicable centrality of the I-of the I not leaving its first person-that signifies the unlimited nature of that responsibility for the neighbor: I am never absolved with respect to others" (44). This is the sense in which the oneself is primary; it is a primacy "of the I not leaving its first person"; it is, he says, "the 'first person accusative' and not the 'nominative'" (44). Levinas uses a paradoxical phrase to describe the nature of this "original ethical relation." He calls it "gratuitous responsibility," as though the one being held hostage-the I-is in a state of gratitude for having been claimed. He writes, Responsibility for the other person, a responsibility neither conditioned nor measured by any free acts of which it would be the consequence. Gratuitous responsibility resembling that of a hostage, and going as far as taking the other's place, without requiring reciprocity. Foundation of the ideas of fraternity and expiation for the other man. Here, then ... there is no initial equality .... Ethical inequality: subordination to the other .... Hence the truth of Dostoyevsky's Brothers Karamazov, often quoted: "We are all guilty of everything and everyone, towards everyone, and I more so than all the others" (44). This is what is meant by the pre-original condition of responsibility: I am born into such a state, whether accepting it or not, whether wanting it or not. I am imbued with responsibility for the other and no one can take my place in this. Indeed, this is the very origin of ethics. That we are "all guilty of everything and everyone ... and I more so than all the others" is utterly foreign to the liberal discourse of tolerance, which instead eschews the concept of guilt and makes a virtue of indifference. In a sense, for Levinas, the gratuitous responsibility of substitution is how one acts ethically. My subjectivity (or selfhood) implies sub-jectum: in responsibility I stand below the other, bearing the other up, bearing the weight of the world, breathing for the other, taking "the bread out of one's own mouth, to nourish the hunger of another with one's own fasting" (56). No one can do this for me; I may take another's place, but no one may take mine. Thus, against deep-rooted Western notions of freedom and autonomy, Levinas posits the self that is not free except insofar as it is "for another." Here, subjectivity is sacred, not in its freedom, but in its captivity. "It is sacred in its alterity," he writes, "with respect to which ... I posit myself deposed of my sovereignty. Paradoxically it is qua alienus-foreigner and other-that man is not alienated" (59). Taking responsibility for the stranger's difference (the face of Calpemia Addams, for example) is the way in which I come to be a self; it is the meaning of liberty and the exercise of ethics.

### Case

#### The reduction of embodied subjectivity to a legal order corresponds to the untethering of subjectivity from the body itself—legal justice becomes the final order of white heterosexual supremacy.

Winnubst 2006 (Shannon, Asst. Prof. Women’s Studies, “Queering Freedom,” 2006 Pp. 47-8)CJQ

In his provocative book White, Richard Dyer argues that whiteness in the modern world gains its hegemonic power through its disembodiment. Following the pattern of privileged subject positions (masculinity, the middle class, heterosexuality, Protestant Christianity in the contemporary U.S.), whiteness functions largely through its invisibility, through its disavowal of race itself: one is not white in the U.S., one is just a person. Whiteness poses as the universal and naturalized ‘order of things.’ Whiteness is not a color or a race; it is just human. It just is, as the history of western metaphysics easily shows. In mutually grounding gestures, it renders itself both invisible and ubiquitous. These dynamics then sediment one another: the more transparent and invisible whiteness becomes, the more normalized and omnipresent it becomes, and so on. But at the core of this disavowal of race, whiteness operates as the universal, unmarked signifier through its disavowal of embodiment itself. Echoing Lacan’s phallus, whiteness functions through its remaining veiled. And a primary site of this veiling is its ontological denial of embodiment itself. Dyer develops this dynamic in the specific register of representation. Bringing the role of religion, as a signifying field on which ‘whiteness’ is constituted, more explicitly into play, Dyer turns to the white ideal of (straight) masculinity, the figure of Christ. As the savior of a religion fraught with somatophobia, Christ represents that incomprehensible fusion of the divine and the human—or the spirit and the body. As Dyer develops it, the principle of incarnation, which sets Christianity apart from other monotheistic religions, is to be in the body but not of it—to suffer the temptations of the flesh but always to transcend them into the purified realms of spirit. Christ appears in the world as a body, but ultimately stands in a realm that transcends it. To put it in the language of Protestant capitalism which it eventually grounds, Christ properly owns his body. This tension, a Lacanian splitting, is what distinguishes whiteness and maleness from their counterparts of “non-whiteness” and “non-maleness,” the signifiers of racial and sexual difference in our binary symbolic. Rather than fastening on more “feminine” traits of Christ or his teachings (for example, his doctrines of peace or championing of the meek and humble; his washing the feet of the lowly and fallen), white male propertied heterosexuality in U.S. culture has idealized the specific trait of Christ’s transcendent relation to corporeality. With this transcendence as their structuring, regulative ideal, whiteness and maleness can come together in white male heterosexuality to engage this struggle between spirit and body with the assurance of ultimately transcending the body and winning the struggle. In his idealized form, the white propertied male is in the body, but is not ultimately captured or constrained by it (and hence is never at fault or slandered for submitting to it).25 He stands in a place that transcends the messiness of materiality. Effectively disembodied, the white male propertied (straight)—and, as we now see yet more explicitly, Christian—body is unlimited by any bodily characteristic, rendering his freedom and individuality limitless. Moreover, because this subjectivity is one unencumbered by material differences, it inhabits the most treasured subject position of classical liberalism, neutrality. The logic of the limit again operates doubly here: as the delimitation of difference that is written as discrete differences into non-white, non-male, non-propertied, non-Christian (and non-straight) bodies; and as the very possibility of delimiting the material realm from that of neutral, universal, rational subjectivity. Not tethered to a body, the white male propertied Christian (straight) body cannot be delimited: it is a free and autonomous individual, neutralized from and unencumbered by all material effects of power or history.

#### The framework of rights and legal protections abstract away from material conditions and have no explanatory power.

Patton 2012 (Paul, Prof Humanities and Languages at University of New South Wales, “Immanence, Transcendence, and the Creation of Rights,” in *Deleuze and Law,* Pp. 15-31)CJQ

What is Philosophy? is equally critical of the uses made of rights talk

in the contemporary world. Deleuze and Guattari argue that human

rights have come to function as axioms within the immanent axiomatic

of global capital. As such, the basic civil and political rights regarded as

human rights coexist alongside other axioms, such as those designed to

ensure the security of property. The result is that when economic conditions

demand the tightening of credit or the withdrawal of employment,

the rights of the poor to basic social goods are effectively suspended.

Human rights are widely proclaimed but, in the absence of any effective

institutional mechanism for their enforcement, it is left to individual

states and non-state organisations to decide when and where their

infringement is so serious as to require action. In addition to these familiar

criticisms of the operation of human rights, Deleuze and Guattari

are critical of the very concept of human rights in so far as these are

supposed to be grounded in universal features of human nature such

as human freedom, rationality, or the capacity to communicate. Such

universal rights ‘say nothing about the immanent modes of existence of people provided with rights’ (Deleuze and Guattari 1991: 103; 1994:

107). Since they presuppose a universal and abstract subject of rights,

irreducible to any singular, existent figures, they are eternal, abstract

and transcendent rights belonging to everyone and no one in particular.

This may well appear from the perspective of contemporary conceptions of human rights to be an outdated understanding. Nevertheless, it goes some way towards explaining Deleuze’s response, when asked by Raymond Bellour and Francois Ewald in 1988 why, unlike Foucault, he took no part in the human rights movement or debates about the constitutional state: ‘If you are talking about establishing new forms of transcendence, new universals, restoring a reflective subject as the bearer of rights, or setting up a communicative inter subjectivity, then it’s not much of a philosophical advance’ (Deleuze 1990: 208; 1995: 152).1

#### The murder of Trayvon Martin is the end-point of this process—white subjectivities order the material world in conformity to this legalistic order of fiction, trending toward rampant violence against the black body.

Musiol 2013 (Hanna, PhD in English Literature from Northeastern University, “Museums of Human Bodies” in *College Literature* 40.3 Summer 2013 via Project Muse on 31 July 2013)CJQ

Paradoxically, on domestic battlefields of the twenty-first century, visual assessments of human bodies take place without the help of new high-tech visual equipment and are often violent, if on a smaller scale. For instance, on February 26, 2012, Trayvon Martin, an unarmed African-American teenager, was shot to death by George Zimmerman, a Neighborhood Watch volunteer in Retreat at Twin Lakes, a gated community in Sanford, Florida (Hajela 2012). While the accounts of what exactly happened on that night vary, what is certain is that Martin, armed only with a bag of candy and a bottle of iced tea, was shot while walking away from a convenience store. The police recording of the 911 call Zimmerman placed fifteen minutes before he killed Martin reveal that the young man appeared to Zimmerman to be “up to no good,” “really suspicious,” and out of place in the gated community Zimmerman was voluntarily patrolling (“Zimmerman 911 Call” 2012). In the weeks after Martin’s death, the debate about the cause of the shooting intensified. While some interpreted it as accidental, others pointed out the possibility that the fatality may have arisen from Zimmerman’s racial bias and tied it to the epidemic of racial profiling in the United States.10 Still others, including Geraldo Rivera, attributed the violence to the look of Martin’s clothes—which are also racialized in the American context—claiming that Martin’s “gangsta-style clothing” was “as much responsible for [his] death as George Zimmerman” (Rivera 2012).11 A widely held suspicion is that Martin’s skin color and fashion choices made him a suspect and a threat in the eyes of many spectators—if not in those of his shooter, then of countless consumers of the media accounts of the Sanford tragedy. 12 Registered visually, the “style” or form of a human body and clothing may impinge on one’s right to live; in the aftermath of Martin’s death, commentators of color shared their own distressing childhood experiences of having to learn how to “walk while being black”: how to look, appear, and arrange themselves in public spaces, in order to live (Dade 2012; Capehart 2012; Scott 2012). Judith Butler and Sunaura Taylor recount parallel instances of discrimination of impaired bodies and violence against sexual and gender minorities. Butler points out that it “very often comes down to how people walk, how they use their hips, and what they do with their body parts” (Examined Life 2010). This is a crucial point that further demonstrates the degree to which practices of display and evaluation that we may associate primarily with museum culture are in fact integrated into our most basic behaviors, such as walking. According to Butler, our “humanness,” understood here in its simplest sense as the right to live, depends, in other words, on whether we manage to stage and curate our bodies appropriately for spectators of our daily lives and whether we can resist others’ curatorial initiatives because “somebody’s gait, somebody’s style of walking” can and often does “engender the desire to kill that person” (Examined Life 2010).

## Block

### Short 2NC Law Overview

#### This legal order is constituted by a series of references to the past, to previous legal orders, promising to provide a justification, each of which only points to a lack at the heart of the law.They said in cross-x a court decides what actions are legitimate; there is no justifiable legal action because the entirety of the law is a fiction; their legal realism reduces subjectivity to text on a page, making life nothing more than ink and paper.

Vatter 2008 (Miguel, Prof. Political Science at Universidad Diego Portales, Santiago, Chile, “In Odradek’s World: Bare Life and Historical Materialism in Agamben and Benjamin” Diacritics Vol. 38 No. 3)CJQ

Kafka’s Before the Law tells the story of a “man from the country” who stations himself before the open gate of the Law and waits, to the point of death, for the doorkeeper to let him in.37 On dying, the doorkeeper reveals to him that this entrance to the Law had [End Page 61] been left open only for him, and that it would henceforth be closed again. For Agamben this parable shows how the law exercises its mythical violence over life, captivating bare life in its logic of the exception: “The open door destined only for him includes him in excluding him and excludes him in including him” [Homo sacer 50]. The parable describes the process through which life, caught in the state of exception, becomes entirely determined and taken over by law. This process culminates in the bare lives of the “sacred men” found at both ends of the spectrum of sovereign power: in the totalitarian egocrat as “living law,” whose every desire becomes law; and in the inmates of extermination camps, whose bodies incarnate the “laws” of racial superiority or class warfare without the intermediation by positive, statutory laws that address them as individuals endowed with rights.38 Agamben argues that bare life in the “willed” or “virtual” state of exception characteristic of sovereign power is “life under a law that is in force without signifying. . . . And it is exactly this kind of life that Kafka describes, in which law is all the more pervasive for its total lack of content” [Homo sacer 53]. Agamben employs an expression that Scholem uses to describe the status of revealed Law in Kafka’s Before the Law. According to Scholem’s reading, the parable depicts the addressees of the Law as having lost the keys to unlock its meaning: they study the commentary (aggadah) but remain locked out of the law (halakah), unable to apply it and thus to follow it. Consequently, for them the Law appears as Nothingness: it “has validity but no significance.”39 Although the Law is devoid of all meaning for its students, Scholem nonetheless suggests that it continues to demand obedience and must be transmitted even though it cannot be applied, since the gate guarded by aggadah remains open.40 Agamben thereby identifies Scholem’s “mystical” formula of revealed Law in the time of galut with the Arcanum of the sovereign power of positive legal systems in the time of totalitarianism (in the period of states of exception). For Agamben the loss of significance of revealed Law coincides with the gradual but inevitable expansion of the “virtual” state of exception in and through systems of positive law, all the way to the point at which the state of exception is no longer exceptional but has become the rule. Agamben takes up Benjamin’s reading of the parable to illustrate the possibility of a revolutionary reversal of the “willed” state of exception in an event that would bring about a “real state of exception,” where it is not that life gets taken over by the law, but conversely that all law becomes “indistinguishable from life.”41

Benjamin reads Kafka’s parables as illustrations of this revolutionary turnabout of bare life in “the attempt to metamorphize life into writing [dem Versuch der Verwandlung des Lebens ins Schrift]” [CC 453]. On Agamben’s interpretation, this metamorphosis corresponds to an “absolute intelligibility of a life wholly resolved into writing” [Homo sacer 55]. In the messianic condition, bare life is lived out as if it were written out ahead of the one living it, as if it were developing from a singular law unto itself.

### AT: Perm do Both

#### Three reasons why the ethical orientation of the alternative is incompatible with the politics of the permutation:

* Substitution means that you and you alone make the ethical decision—nobody can make it for you, not even the drone courts set up by the 1AC. You are always and already responsible for the Other.
* Condemned before the other – We are all guilty of atrocious violence before the Other and before every Other. Their theory of justice is grounded in a right to revenge, which amounts to the dominance of difference by sameness.
* Standpoint of the hostage – the only way to reformulate ethics outside of violence and domination is by submitting yourself to the standpoint of the hostage, who is being-for-the-other in every possible way. This is a radical unthinking of the sovereign subject of law.

Levinas and Nemo 1985 (Emmanuel and Philippe, philosophers, from “Ethics and Infinite: Conversations with Philippe Nemo,” online at http://hermitmusic.tripod.com/levinas\_ethics\_infinity.pdf)CJQ

E.L.: Since I am responsible even for the Other's responsibility. These are extreme formulas which must not be detached from their context. In the concrete, many other considerations intervene and require justice even for me. Practically, the laws set certain consequences out of the way. But justice only has meaning if it retains the spirit of disinterestedness which animates the idea of responsibility for the other man. In principle the I does not pull itself out of its "first person"; it supports the world. Constituting itself in the very movement wherein being responsible for the other devolves on it, subjectivity goes to the point of substitution for the Other. It assumes the condition – or the uncondition – of hostage. Subjectivity as such is initially hostage; it answers to the point of expiating for others. One can appear scandalized by this utopian and, for an I, inhuman conception. But the humanity of the human – the true life – is absent. The humanity in historical and objective being, the very breakthrough of the subjective, of the human psychism in its original vigilance or sobering up, is being which undoes its condition of being: disinterestedness. This is what is meant by the title of the book: Otherwise than Being. The ontological condition undoes itself, or is undone, in the human condition or uncondition. To be human means to live as if one were not a being among beings. As if, through human spirituality, the categories of being inverted into an "otherwise than being." Not only into a "being otherwise"; being otherwise is still being. The "otherwise than being," in truth, has no verb which would designate the event of its un-rest, its dis-inter-estedness, its putting-into-question of this being – or this estedness – of the being. It is I who support the Other and am responsible for him. One thus sees that in the human subject, at the same time as a total subjection, my primogeniture manifests itself. My responsibility is untransferable. No one could replace me. In fact, it is a matter of saying the very identity of the human I starting from responsibility, that is, starting from this position or deposition of the sovereign I in self consciousness, a deposition which is precisely its responsibility for the Other. Responsibility is what is incumbent on me exclusively, and what, humanly, I cannot refuse. This charge is a supreme dignity of the unique. I am I in the sole measure that I am responsible, a non-interchangeable I. I can substitute myself for everyone, but no one can substitute himself for me. Such is my inalienable identity of subject. It is in this precise sense that Dostoyevsky said: "We are all responsible for all for all men before all, and I more than all the others.

### AT: Framework

#### The law is the violent universalization of a particular principle—it fundamentally relies on making a situation transcendent in an injunction against the Other. Law can only account for justice by opening itself to the Other and hence by displacing itself from the very position of the law which is only possible on the basis of the alternative.

#### In the same way, their enframing arguments rely on identifying universal norms of debate and them applying them deductively and constructing abstract scenarios. Like the court dismissing Al-Aulaki’s case, the affirmative feigns concern for ethics only to preclude any meaningful ethical encounter by dismissing the case before any judgment could be made to enact justice for the Other.

Secomb 2000 Linnell Secomb [lecturer in Gender Studies at the University of Sydney] Fractured Community \* Hypatia 15.2 (2000) 133-150, project muse

Nancy's thinking on community marks a radical departure from the universalist conceptions of both community and subjectivity. Nancy's vision of community and singularity, formulated in the light of Heidegger's Dasein and Mitsein, puts in question accepted ideas about human existence and society (Heidegger 1992). For Nancy, as for Heidegger, the human existence is not an individual, subject, or citizen, but, in Heidegger's terms, a "being-there," or in Nancy's, a "singularity." For Nancy, the human existence is a singularity that is from the outset an inclining towards others and a sharing with and exposure to others. The human being is not, for Nancy, an already existing individual who would subsequently form a community with others. Rather, the human existence emerges from the community of others. Community is not produced by the agreement of individuals; rather, human singularities are produced by community. Community does not, therefore, involve intentionality, agreement or commonality. We do not make it happen--it enables our becoming. Nancy writes: "community . . . [is] an experience--not, perhaps, an experience that we have, but an experience that makes us be" (Nancy 1991, 26). This community which engenders singularities is the experience of sociality and sharing. Community is not a common identity or common goal but an activity of interrelation. It is the creation of social ties, interaction, and engagement: "If being is sharing, our sharing, then 'to be' (to exist) is to share" [End Page 140] (1993, 72). For Nancy, it is this sharing that is the basis of freedom and not the autonomy and non-interference that liberal freedom assumes. For Nancy,"freedom withdraws being and gives relation" (1993, 68). However, while community is characterized by sharing it is also the experience of limit and difference. The singularity that the free sharing of community produces is a finite and mortal being: in the relation to the heterogeneity of community the singular being is exposed to limit--to birth, death, and alterity--and in this exposure the singular being finds not fusion, union, or communion with others, but limit and difference. The finitude, the death, exposed in community does not constitute community as the fusion of autonomous subjects but the being-together of singular finite beings. The limit and singularity of the self and the alterity of the other are revealed in the finitude and limit of the other. This finitude is exposed through birth and death; this limit is enacted through the touch that identifies the boundaries of the other's skin, and through the binding and unbinding, the caress and the scorching, of love, passion, and loss. These limits reveal both the alterity of the other and the engagement with this different being. Community is a sharing evoked by the exposure to these terminations and boundaries (Nancy 1991, 26-28). This community of singular beings, who are exposed to each other in the sharing of community and attain existence in the context of this exposure, is not an entity or a static essence. Neither is it a common project or a joint production by human existences. Community is not a work or a project constructed together after negotiated agreement. Community, Nancy suggests, "cannot arise from the domain of work. One does not produce it, one experiences or one is constituted by it as the experience of finitude" (1991, 31). Community, then, is not a common work or project but is a sharing which is never completed. This incompletion does not imply lack but suggests the ongoing, never completed, activity of sharing. Community is an incompletion always in process; an unworking, unraveling, unbecoming: "Incompletion is its 'principle,' . . . a workless and inoperative activity. It is not a matter of making, producing or instituting a community; . . . it is a matter of incompleting its sharing. Sharing is always incomplete" (Nancy 1991, 35). Community is not a productive project of becoming, a social contract produced by citizens. It is a sharing of singularities who are together unbecoming and unbinding in their sharing and social binding. This unworking is the refusal of unity. It is resistance to totalizing communion. Nancy suggests that fascism annihilates community by destroying difference but that there is always a resistance to this destruction. "[T]he fascist masses," Nancy writes, "tend to annihilate community in the delirium of an incarnated communion. . . . [C]ommunity never ceases to resist this will. Community is, in a sense, resistance itself: namely, resistance to immanence" (Nancy 1991, 35). These characteristics of community--its pre-existence which evokes the [End Page 141] being of singularity as an inclining towards others, its revelation of finitude as the structure of self and others in the sharing of community, and its incompletion and unbinding--constitute an understanding of community which belies the assumptions of universalist formulations of the political body. Instead of community understood as a contract or a "reasonable agreement" between individuals, here community is understood as the sharing and interrelation that allows the human existence to be. Rather than community understood as a common work or project of similar citizens, it is an unworking or unbecoming that is the incompletion of sharing and exposure of alterities. As a result, community as limit and finitude replaces community understood as a communion or union of individuals.

### Framework

#### Ontological investigation of community is necessary to informed policy

Richard Welch [Department of Geography, University of Otago, Dunedin, New Zealand] and Ruth Panelli [Department of Geography, University College London, London] “Questioning community as a collective antidote to fear: Jean-Luc Nancy’s ‘singularity’ and ‘being singular plural’” Area (2007) 39.3, 349–356 Area Vol. 39 No. 3, pp. 349–356, 2007 ISSN 0004-0894 © The Authors. Journal compilation © Royal Geographical Society (with The Institute of British Geographers) 2007 Blackwell Publishing Ltd

Linking a challenging ontological position to the way beings live everyday life is a demanding undertaking. Nevertheless, we are interested to consider the role human geographers might play in this process and, perhaps more selfishly, what human geographers might gain by such engagement. We support Nancy’s own project (to point to the dangers of common- being constructions of community and to gesture towards an improvement in being-to-being behaviour that might result from wider acceptance that being involves ‘being-with’). In determining the form of that support, we suggest the adoption of a pragmatic position based on the following assumptions. Firstly, Nancy’s take on the meaning of existence will not readily find its way into popular discourses because of the intellectual challenges it involves. Secondly, for the reasons outlined earlier in this paper, popular invoking of common-being community will continue. Thirdly, while policy formulators are aware of the practical problems that arise when using community as a vehicle for policy implement- ation (and have an ambivalent view of community as a result), they do not yet have access to theory that explains this troubled relationship. Finally, theoretically informed policy is more likely to meet its objectives. For human geography, the challenge is to position itself so that it can constructively critique policy predicated on problematic and illusory notions of ‘common-being’ community; to do this via rigorous theorisation and empirical exploration of the way beings engage with collectives. In this final section of the paper, we ponder what might constitute some Nancian-informed geographies. We highlight a selection of the conceptual and methodological opportunities that arise in imagining how geographies of ‘being singular plural’ might be proposed, undertaken and placed in dialogue with other contemporary per- spectives in geography.6

### Hegemony Link

#### The affs imagination of politics around the policy of the border rests on a fundamental conception of sociality as defined by an “US” who are separate from “Them.” America, like all communities, is a myth. Thus, these boundaries are not natural, but the aff makes them so.

Ben Golder[Lecturer in the Faculty of Law at the University of New South Wales], Victoria Ridler[School of Law at Birkbeck College], and Illan Rua Wall [Senior Lecturer Oxford Brookes University] Editors’ Introduction: ‘The Politics of the Border/ The Borders of the Political’ Law Critique (2009) 20:105–111

What, then, can we call the politics of the border? The examples of the Israel– Palestine and the United States–Mexico borders demonstrate that the border is the site of both an actual and an imaginary exclusion. The border is that site where the state determines the limits of its own territory and arrogates to itself the right to determine who is to be included and who is to be excluded. The former Australian Prime Minister, John Howard, eloquently attested to this solipsistic state logic when he famously stated before the 2001 Australian federal election that: ‘We will decide who comes to this country and the circumstances in which they come’ (Howard 2001). Borders in this sense are productive of loss, exclusion and banishment. In this vein the ﬁgures of the refugee, the asylum seeker, the illegal immigrant and the ‘boat person’ are created and mobilised as the state’s dark other.Whilst the border cannot function seamlessly in this regard, nevertheless, it often does so effectively in practice, projecting images of negative self-reference against which the community seeks to deﬁne itself in pure and hermetic terms. This traumatic, ‘external’ aspect of the border of course recalls a more ‘internal’ and constitutive function, for it is precisely against such spectres of alterity that the specious ‘we’ of Howard’s logic is itself imagined. The unity of the nation-state is achieved in and through the invocation of a border—the border functions in this register as the very object of imagination around which (national) identity is created and recreated. Contemporary discourses of national security and border protection are directed not simply at the exclusion of the unwanted other but also towards the production and regulation of political subjectivity within the polity. The border allows us to project a limit to the community and to create an ‘us’. Jean-Luc Nancy tells us that this process of the creation of a community of unity (what he calls ‘communion’) is a form of ‘mythic’ thought. Myth is that to which a political community appeals in order to found its existence as such and to perpetuate that existence as the intimate sharing of an identity or essence. The passage from the political to the sphere of politics occurs, then in myth, insofar as it is in myth that the existence of lived community is founded and perpetuated (James 2006, p. 196). Nancy rejects this attempt to enclose the community, claiming that the community exceeds any possible representation of it. If this is the case then the border, as that which attempts to deﬁne a unity of community, is to be resisted. Kafka’s short story, ‘The Great Wall of China’, presents us with an interruption of the mythic thought of community’s unity. As Peter Hutchings will later discuss, the story relates the building of the Great Wall of China through the eyes of one of its engineers. However, what begins as a simple tale quickly becomes something much more complex. We begin to see how the wall is in fact a technology of community. Because each of the very many engineers is periodically rotated around the country, the sense of the struggle for the wall creates the very sense of the community in unity. The wall operates in this order to enclose the community, much like in Benedict Anderson’s analysis newspapers allowed for the creation of a sense of nation by involving the readership in imagining all the other readers (Anderson 1991). However, this nation-building does not end there, because Kafka goes on to overturn or deconstruct this sense of an operative unity of the community. His short story ends with a number of allegorical tales. The one that matches our purpose here is that of the monarch. The size of the country implies that no province knows the name of the current Emperor: Thus, then do our people deal with departed emperors, but the living ruler they confuse among the dead. If once, only once in a man’s lifetime, an imperial ofﬁcial on his tour of the provinces should arrive by chance at our village, make certain announcements in the name of the government, scrutinize the tax lists… [when he mentions the name of the ruler] then a smile ﬂits over every face…. Why, they think to themselves, he’s speaking of a dead man as if he were alive, this Emperor of his died long ago, the dynasty is blotted out, the good ofﬁcial is having his joke with us…. If from such appearances any one should draw the conclusion that in reality we have no Emperor, he would not be far from the truth (Kafka 1973, pp. 78–79). Kafka’s community, despite the projected unity that the wall brings, is ungovernable. The imagined unity of the mythic thought is exceeded in every moment by the community itself. Thus, the question of the territorial unity given by the projected space of the border is to be rejected. Community always exceeds its mythic representations. This use of the border is an excuse to create an oppressive unifying notion of communion. As we can see, the politics of the border are not only reducible to the exclusionary and governmental functions of managing and dividing populations, of casting out and rejecting, but also of shoring up and stabilising that which remains within the border. Beyond the question of the border’s inclusion/exclusion, we might also ask of the borders of the political. We are reminded of Jacques Rancie`re, who speaks to the centrality of borders to the concept of the political: To speak of the boundaries of the political realm would seem to evoke no precise or current reality. Yet legend invariably has the political begin at one boundary, be it the Tiber or the Neva, and end up at another, be it Syracuse or the Kilyma: riverbanks of foundation, island shores of refoundation, abysses of horror or ruin. There must surely be something of the essence in this landscape for politics to be so stubbornly represented within it. And we know that philosophy has played a signal part in this stubbornness. Its claims in respect of politics can be readily summed up as an imperative: to shield politics from the perils that are immanent to it, it has to be hauled on to dry land, set down on terra ﬁrma (Rancie`re 2007, p. 1). Politics begins and ends with a border because it is, at base, the problem of foundation. Rancie`re details the Platonic project as an anti-maritime polemic; that is, a move away from the sea in order to provide the solid ground of foundation. In Rancie`re’s idiolect this ‘solid foundation’, which Plato ﬁnds a distance of 80 stadia from the sea, is none other than the ‘distribution of the sensible’ of the ‘police’ order. For Rancie`re, the ‘police is not a social function but a symbolic constitution of the social. The essence of the police is neither repression nor even control over the living. Its essence is a certain manner of partitioning the sensible’ (Rancie`re 2001, pp. 6–7). The everyday politics of the police order is a process of counting, of managing who and what counts, and the manner in which they count. In the international realm this can literally be seen with the strategic and legitimatory ﬁxation of the West on the horrors of Halabja, and the incessant counting of those murdered there. This is then to be put beside the refusal to count the Iraqi deaths since the beginning of the invasion and occupation, and more recently the deaths due to Turkish incursions in Northern Iraq. In this the very same citizens are counted or not counted by the very order of everyday politics. Against this police order, ‘politics’ does not occur in the everyday micro-politics of Westminster or Washington; rather it is the very disruption of the everyday course of things. This interruption is rare and revolutionary in its outlook—an event. Thus, the event itself is a border, it is a limit which cannot be explained by the order that it ends or indeed by the new that it begins. To talk of the borders of the political is not simply to propose that we divide up, in a disciplinary sense, the political from its others. Nor is it simply to pose the question of the boundaries of the state. Rather, it is to pose the possibility of a political event which ruptures the givenness of existing relations. Antonio Negri articulates such a possibility as constituent power, and characterises it as the very essence of the political. ‘Constituent power is the deﬁnition of any possible paradigm of the political. The political has no deﬁnition unless it takes its point of departure from the concept of constituent power’ (Negri 1999, p. 333). Such a formulation would attempt to reverse the Platonic move towards the solidity of the political fundament with the ‘motley crew’ (Linebaugh and Rediker 2002) of the multitude. While we may not be certain about Hardt and Negri’s concept of the multitude, we can see the utility of posing the question of the political especially in the context of the radical questioning of the current state of the situation. Now, more than ever, is the time to question the borders of the political, to reassert its openness.